TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 151.

SOLOMON MOSES AND SOLOMON WEILL, SURVIVORS OF GOTCHO BLUM, APPELLANTS,

vs.

GEORGE H. WOOSTER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 12, 1883.

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INDEX.

	Original.	Print.
Subpœna	1	1
Marshal's return	2	1
Bill of complaint	3	1
Appearance for defendants	37	21
Answer	38	21
Replication	40	22
Interlocutory decree	42	23
Master's notice	45	24
Evidence before the master	46	25
Testimony of Solomon Moses	52	26
Solomon Weill	63	29
Solomon Moses (continued)	108	40
Exhibit A—Affidavit of Solomon Moses as to guides	132	46
Affidavit of Solomon Weill	134	47
Exhibit No. 2—Affidavit of Solomon Moses	136	47
No. 1—Affidavit of Albert Borschardt and statement	138	48
Testimony of Solomon Moses	142	49
Charles Gimber	156	52
John A. Pipo	167	59
Geo. H. Wooster	177	64
Ernest Broseman	183	68

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	Original.	Print.
Testimony of Albert Borschardt	194	73
Justus Burns	254	92
John A. Pipo (recalled)	276	98
Andrew Comstock	280	100
Notice of motion to re-open case	281	100
Testimony of Andrew Comstock (resumed)	283	100
Affidavit of Franklin Bien	292	103
Testimony of Richard Schoen	294	104
Francis Witt	309	108
Franklin Bien	316	110
Complainants' Exhibit—Blank copy license	319	111
License to John A. Pipo	321	113
Master's report	323	115
Exceptions of Defendants to master's report	328	118
Final decree	332	120
Proof of service of order to show cause, &c.	334	120
Order to show cause as to opening default, &c.	335	121
Affidavit of Franklin Bien in support of opening default	336	121
Notice of motion to have exceptions heard, &c.	340	123
Affidavit of Andrew Comstock in opposition to opening default	341	124
Order opening default	345	126
Affidavit of Andrew Comstock as to non-compliance with order opening default	347	126
Waiver of costs	348	127
Certificate of clerk as to failure of defendants to file bond	349	127
Postea	350	127
Affidavit of service of appeal	351	128
Petition of appeal	352	128
Bond	355	130
Affidavit of service of citation	358	131
Citation	329	131
Stipulation as to exhibits	361	132
Clerk's certificate	362	132

1 The President of the United States of America to Solo-
[L. S.] mon Moses, Gotcho Blum, & Solomon Weill, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, in equity, on the first Monday of February, A. D. 1881, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by George H. Wooster, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the twentieth day of December, in the year one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

JOSEPH M. DEUEL, *Clerk.*

ANDREW COMSTOCK,
Compl't's Sol'r.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of February, 1881, or the bill will be taken *pro confesso* against them.

J. M. D., *Clerk.*

2 (Endorsed:) I hereby certify that on the 21st day of December, 1880, at the city of New York, in my district, I personally served the within subpœna upon the within-named Gotcho Blum by exhibiting to him the within original, and at the same time leaving with him a copy thereof. Dated December 29th, 1880. Louis F. Payn, U. S. marshal S. D. N. Y. W. H. M. (U. S. circuit court. Filed Dec. 30, 1880. Joseph M. Deuel, clerk.)

3 Circuit Court of the United States, Southern District of New York. In Equity.

GEORGE H. WOOSTER
vs.
SOLOMON MOSES, GOTCHO BLUM, and SOLOMON WEILL.

Andrew Comstock, complainant's solicitor, 71 West B'way.
To the defendants and their solicitors.

4 To the honorable the justices of the circuit court of the United States for the 2d circuit within and for the southern district of New York, in Equity:

George H. Wooster, of the city of New York, county of New York, State of New York, a citizen of the United States, brings this his bill against Solomon Moses, Gotcho Blum, and Solomon Weill, composing the firm of Moses & Blum & Weill, of the city of New York, county of New York, State of New York.

And thereupon your orator complains and says that heretofore, and before the 5th of October, 1858, one Alexander Douglas, being

then a citizen of the United States, was the true, original, and first inventor or discoverer of a certain new and useful invention, to wit, an improved folding-guide for sewing-machines, &c., and that the said invention was not known or used by others before his invention or discovery thereof, and was not at the time of the application for letters patent therefor in public use or on sale with the consent or allowance of the said Douglas, as the inventor or discoverer thereof, contrary to the provisions of the statutes of the United States in such case made and provided.

That the said Douglas made application in writing to the Commissioner of Patents of the United States for the granting of letters patent for said invention, and paid into the Treasury of the United States the fees required by law, and then and there also duly complied in all other respects with all the necessary conditions and requirements of the statutes of the United States in such case made and provided, prior to the granting of the letters patent hereinafter mentioned.

That on the 5th day of October, 1858, letters patent of United States, bearing date on that day, were issued to the said Douglas according to law, whereby there was granted to him and his heirs, executors, administrators, or assigns, for the term of fourteen years from the 5th day of October, 1858, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the invention or discovery aforesaid, a description whereof was given in the words of the said Douglas, in the said schedule annexed to the said letters patent and was made part of the same.

That the said letters patent were issued in the name of the United States of America, and were sealed with the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were numbered 21659, and were issued and delivered to the said Douglas.

That thereupon, after the issuing of the said letters patent as aforesaid, the said Douglas put the said invention into use, the same was largely used in his business, and he granted licenses to many persons to use the said invention under said letters patent upon payment of certain sums provided to be paid by them, and he also brought numerous suits at law in the circuit courts of the United States founded on said letters patent, in all of which the defendants submitted and took licenses under said letters patent, paying therefor, or verdicts were rendered against them sustaining the novelty of said invention and the validity of said letters patent.

And your orator further shows that upon the application of said Douglas, and due proceedings had, and upon a compliance with all of the provisions and requirements of law in such case made and provided, the letters patent were duly extended for seven years from the 5th day of October, 1872, and said extended patent was thereupon duly assigned by instrument in writing, subscribed by said Douglas, to your orator.

And your orator further shows to your honors that heretofore, on or about the 10th day of December, 1872, your orator, find-

ing that the said patent which had been granted was inoperative by reason of a defective or insufficient specification, thereupon, so finding, and the said error having arisen by inadvertency, accident, and mistake, and without any fraudulent or deceptive intention on the part of said Douglas or your orator, the said Douglas and your orator surrendered said patent to the Commissioner of Patents, according to the statutes of the United States in such case made and provided, and having amended the specification of claim in accordance with the decision of the said Commissioner in the premises, and having paid the fees prescribed by, and in all other things complied with, the statutes of the United States in such case made and provided, new letters patent of the United States for the same invention were, on the said 10th day of December, 1872, issued and delivered to your orator, according to law, whereby there was granted to him for the then unexpired term of twenty-one years from the 5th day of October, 1858, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention or discovery of an improved folding-guide, a description whereof was given in the words of said Douglas in the schedule annexed to the said reissued letters patent.

That the said new letters patent were issued in the name of the United States, and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were sealed with the seal of the Patent Office of the United States, and were numbered 5180, and were issued and delivered to your orator.

And your orator prays that said letters patent and the schedule annexed thereto as aforesaid may be deemed and taken as part of his bill, and to the originals of which, or a duly authenticated copy thereof, now in your orator's possession and ready to be produced, he craves leave to refer.

7 And your orator further shows that he has put the said invention largely into use, and has granted, upon payment of established license fees, to those persons whose business has not competed seriously with his own, or that in which he has been interested, and he has also brought large numbers of suits in equity and actions at law in the circuit courts of the United States, and in all of said suits and actions said letters have been sustained, and in many of them the defendants submitted and took licenses under said letters patent upon payment of license fees, and some of said defendants were enjoined from further use of said invention.

And your orator has ever since the date of the said assignment to him been and — entitled to all the rights, interests, and privileges thereby secured unto him in and to the said invention or discovery in the said letters patent particularly set forth, and is, and ever since the date thereof has been, entitled to the exclusive use of the said invention and improvement to Oct. 5, 1879.

And your orator further shows unto your honors that the said invention or discovery so patented aforesaid unto him is of very great utility, and that the same has been extensively introduced into public use, and that the public have generally acquiesced in your orator's exclusive right to the same, and your orator would, but for the

wrongful acts of the said defendants and others acting in concert with them, have made large gains, profits, and advantages from the manufacture, use, and sale of the said invention; and your orator would, but for the wrongful acts and doings of the said defendants and others acting in concert with them, *would* have been enabled to use the said invention, to which he was entitled to the exclusive right as aforesaid, with profit and advantage, but that by the said wrongful acts and doings he was prevented and hindered from so doing.

And your orator further shows unto your honors, upon information and belief, that the said defendants, well knowing the premises and the—and privileges secured unto your oraotor, and in
8 order to deprive him of the profits, benefits, and advantages which might and otherwise would have accrued to him at the city of New York and within the said southern district of New York, and without the license or permission of your orator, they, the said defendants, have since the date of said reissue and prior to the commencement of this suit unlawfully and wrongfully made or caused to be made, sold or caused to be sold, used or caused to be used, one or more folding-guides each and all containing the said invention, discovery, improvements, and combinations, the exclusive right to which is secured to your orator, as hereinbefore set forth, and which said unlawful making, use, and sale by the defendants as aforesaid was a violation and infringement of your orator's exclusive rights and privileges, and that the said defendants have derived and received great gain and profits, but to what amount your orator is ignorant and cannot set forth, but your orator prays that the defendants may be required to make a disclosure of all such gains and profits.

And your orator in like manner avers that the defendants, though requested to desist from such unlawful use, and to pay to your orator such gains and profits as the defendants have actually made, refused so to do, by means whereof your orator is and has been greatly injured, and was hindered from putting the said invention or discovery into successful operation, and from hindering others so to do, and was deprived and prevented from receiving the gains and profits to which he was lawfully entitled from the exclusive rights and privileges so granted and secured to him as aforesaid, and which he would have derived and acquired but for the said wrongful acts of the said defendant-.

And your orator prays that the said defendants may be compelled by a decree of this honorable court to account for and pay
9 over unto your orator all such gains and profits as have accrued or arisen to, or been earned or received by, the said defendants, and all such gains and profits as your orator would have received but for the said wrongful acts and doings of the said defendants, and all damages your orator has sustained thereby, and that this honorable court will assess the same, or cause them to be assessed, under its direction, and will increase the same, in its discretion, as provided by the law.

And that the said defendants may be decreed to pay the costs of this suit; and that your orator may have such other relief as the

equity of the case may require and as to your honors may seem meet.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may full, true, direct, and perfect answer make, according to the best of their or their clerks', agents', or workmen's knowledge, remembrance, information, and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same was here repeated, paragraph by paragraph, and they were thereto severally and specifically interrogated—

May it please your honors to grant to your orator a writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, directed to the said defendants, commanding them to be and appear and make answer unto this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem required by the principles of equity and good conscience.

And your orator will ever pray.

GEO. H. WOOSTER.

ANDREW COMSTOCK,
Complainant's Solicitor and of Counsel.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

On this 17th day of December, 1880, before me came George H. Wooster, to me personally known, who, being by me duly sworn, did depose and say that he is the complainant in the foregoing bill of complaint named, and that he has read the said bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

[L. S.] CHAS. SPIRO,
Notary Public, N. Y. Co.

THE U. S. PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of the office of the reissued letters patent granted George H. Wooster, dated December 10th, 1872, No. 5180, for "Improvement in folding-guides for sewing-machines."

In testimony whereof I, M. D. Leggett, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[L. S.] M. D. LEGGETT,
Commissioner.

No. 5180. Reissue.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas Alexander Douglas, of New York, New York, assignor by mesne assignments to George H. Wooster, has presented to the Commisioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in folding-guides for sewing-machines (for which letters patent were issued to him dated October 5, 1858, and extended seven years from October 5, 1872, which letters having been surrendered the same have been cancelled and new letters ordered to issue to said assignee on an amended specification), a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

12 Now, therefore, these letters patent are to grant unto the said George H. Wooster, his heirs or assigns, for the term of twenty-one years from the fifth day of October, one thousand eight hundred fifty-eight, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this tenth day of December, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh.

[L. S.] B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

ALEXANDER DOUGLAS, of New York, N. Y., assignor by mesne assignments to George H. Wooster.

Improvement in Folding-Guides for Sewing-Machines.

Specification forming part of Letters Patent No. 21659, dated October 5, 1858; extended seven years; Reissue No. 5180, dated December 10, 1872.

To all whom it may concern:

Be it known that I, Alexander Douglas, of the city, county, and State of New York, have invented a new and improved folding-guide for folding and turning in the edges of a piece of cloth or other material for binding, or for other similar purposes, preparatory to sewing; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to

the accompanying drawing forming part of this specification, in which—

13 Figure 1 is a view of my folding-guide, so formed as to fold the material simultaneously upon the center and upon both edges. Figs. 2, 3, 4, 5, 6, and 7 are transverse sections of the said guide at the points where the strengthening transverse pieces B B, &c., are situated, as shown in Fig. 1. Fig. 8 is a cross-section of a binder, which is of the same sectional form at both ends. Fig. 9 is a cross-section of a binding as it issues from the said guide.

Similar letters of reference indicate corresponding parts in the several figures.

To enable others to make and use my invention, I will proceed to describe its construction and operation.

The simplest method of constructing my improved guide is to take a plate of metal, A, of a width somewhat greater than that of the strip or piece of cloth or other material which is to be folded, and have the edges of such plate turned toward each other the whole length of the plate. The plate having its edges thus turned or bent has the bent edges turned again on the lines B^2 B^3, the turn commencing at a short distance from the end shown in Figs. 1 and 2, and increasing toward the other end, as shown in Figs. 3, 4, 5, 6, and 7. If it is desired to fold the material in the center, the plate may be then again bent at or near the middle, commencing at the end shown in Fig. 2, and gradually increasing all the way along to the other end, as shown in section in Figs. 2, 3, 4, 5, 6, and 7. This gives the edges of the said plate the curved and twisted appearance shown in Fig. 1. This piece of metal A is the guiding surface of the folder. Its shape and folds determine the number and character of the folds in the material to be guided. The plate A may be strengthened by transverse pieces B B, which are secured to its edges, and lie as close as practicable to the concave side of the plate, just leaving space enough for the cloth to pass between them and the plate A. By inserting a strip of cloth or other material into the guide at the end shown in Fig. 2, and drawing it toward the other end, it will follow the configuration of the surface of the exterior plate A,

14 and will be folded into a shape indicated by the turnings of said guiding surface. Small projections, provided with holes for the passage of cord, may be arranged, as shown at Fig. 1, F and H, so as to guide a cord or cords under the turned edge or edges of the material.

To apply the binding to the edge of cloth or other material, such edge is placed in such relation to the guide, as is shown in the line D, in Figs. 1 to 9, and is drawn along at the same time that the binding is drawn along either by the feed of a sewing-machine or other device. The binding is stitched at the proper places for holding the edges and the cord, if a cord is used. The ordinary line of stitching is indicated in Fig. 9 by the line C C.

If the guide is used in combination with a sewing-machine, as will ordinarily be the case, it will be attached to the cloth-plate in such a position as to discharge the folded material under the needle and in the line and direction of the feed.

In Figs. 1, 3, and 6 are shown screws for fastening the guide there represented to the cloth-plate. The direction of the screws indicate what will be in that case the position of the guide. In Fig. 8 I have shown a section of another form of binder for the same purpose and productive of the same result, but which is of the same sectional form throughout, and is not gradually folded upon itself in converging lines, as described and shown in the case of the first-mentioned guide.

It is manifest from the above description that if the guide be not turned or folded together through the center, or if one of the edges be not folded over, or if the strip of material be not wide enough to receive the fold on both edges, in the first case the material will be folded only upon each of the edges, and in the last cases it will be folded near the center and upon one edge only.

The great advantage of my guide is that by reason of the folding of the edges it permits the use of raw-edged material without a selvedge; another is that it combines cording with binding.

I do not claim guides for folding material through the center only, as those are described in Sweet's patent of 1853, Nichol's patent of 1856, McCurdy's patent of 1856, Singer's patent of 1856, and by others; nor do I claim guides for turning or hemming one edge of a piece of cloth or other material, except when the guide is so shaped as also to simultaneously either fold the material in the center or upon the other edge; but

What I do claim is as follows:

1. A folding-guide, the guiding surface of which is turned or folded at each edge, so as simultaneously to fold the material on each edge, substantially as described.

2. A folding-guide, the guiding surface of which is turned or folded so as simultaneously to fold the guided material at or near the center and upon one or both edges, substantially as described.

3. A folding-guide, the guiding surface of which is gradually turned or folded at each edge so as simultaneously to fold the material on each edge, substantially as described.

4. A folding-guide, the guiding surface of which is gradually turned or folded so as simultaneously to fold the material at or near the center and upon one or both edges, substantially as described.

5. A folding-guide, substantially as described, provided with means, substantially as described, for attaching the same to and combining it with a sewing-machine.

6. A folding-guide, substantially such as described, provided with a cord-guide, as and for the purposes set forth.

ALEX. DOUGLAS.

Witneses:

EDWIN A. BOOTH.

WM. S. PACKER.

16 Circuit Court of the United States, District of ——.

GEORGE H. WOOSTER *ag'st* —— ——.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

George H. Wooster, being duly sworn, says: I am the complainant in this suit. For many years past I have been engaged in the business of manufacturing and selling ruffles and trimmings, in the production of which folding-guides described in said letters patent, and upon which this suit is brought, have been largely used.

I am thoroughly conversant with the uses and purposes of said letters patent, and with the utility of the same. Prior to the introduction of such guides into use it had been the custom in binding or banding goods either to use selvedge-edged material for binding or banding or to fold over the edges of such material by hand. By the use of one of these guides with the sewing-machine the operation of folding the edges which had been previously folded by hand was greatly simplified and increased in rapidity. A single operative with a sewing-machine provided with such guides can bind or band five or six times as many goods as was previously done by hand in the same time. By means of the introduction of such guides, also, the expense of binding or banding has been very largely reduced, to wit, to about one-fourth or fifth the previous expense.

During the original term of said letters patent I was a licensee thereunder, and shortly after the said letters patent
17 were extended I purchased the same of the inventor, Alexander Douglas. My rights under said letters patent have been largely acquiesced in and recognized by persons using the invention, established by suits in the courts. I have granted large numbers of licenses under said reissued letters patent to various persons whose business did not seriously compete with my own, or who were desirable persons to be permitted to use said invention. I have, however, always exercised a discretion in granting or refusing licenses to persons applying for the same. The price of such licenses is fixed with reference to the number of folding-guides to be used and the length of time for which the licensee desires the license. The rates of license, when granted, varied from fifty dollars for the use of a single guide for one year to, in one instance, the sum of seven thousand dollars for the use of an unlimited number of guides in the business of a single corporation for the whole term of the patent.

My usual practice has been to grant licenses for the term of a single year. Said licenses have been granted only to persons who have fully acknowledged the novelty of the invention and the validity of said letters patent. The form of the license usually granted is as follows:

"Whereas certain letters patent of the United States, bearing date the 5th day of October, 1858, were granted to Alexander Douglas, of the city of New York, for an improved folding-guide for sewing-machines, &c.; and whereas George H. Wooster, of said city, has, by assignment from said Alexander Douglas, become sole owner of said

letters patent; and whereas said letters patent have been extended for seven years from October 5th, 1872, and reissued December 10, 1872, No. 5180.

And whereas —— ——, of ——, of the State of ——, parties of the second part, are desirous of obtaining a license to use said folding-guide:

Now, this indenture witnesseth: That the said George H.
18 Wooster, party of the first part, for and in consideration and in case of the due and faithful keeping and performing of each and all of the conditions, agreements, and admissions hereinafter contained, to be kept and performed by the said parties of the second part, has given and granted, and by these presents does give and grant, unto the said parties of the second part license to use — folding-guide-, containing th- inventions described in said letters patent for one year from the date hereof, at their place of business, No. — street, in the — of —, and no longer, and not otherwise or elsewhere, without written permission of said George H. Wooster, his executors, administrators or assigns—that is to say:

First. The said parties of the second part, for their heirs, executors, and administrators, fully admitting and acknowledging the force and validity of said letters patent and all reissues thereof and the novelty of the invention therein described and claimed, covenant and agree to pay to the said George H. Wooster, as a patent fee or royalty, the sum of — dollars in lawful money.

Second. The said parties of the second part further covenant and agree that during term of said letters patent they will not make, use, sell, lend, give away, or keep on hand any folding guide or guides, containing any of the inventions described and claimed in said letters patent without the written license of said party of the first part.

Third. That said parties of the second part further covenant and agree that they will not contest in law or equity nor aid or assist or advise others to contest in law or equity the validity of the above-described patent or any reissue thereof; and that they will never refuse to pay the party of the first part the license fee as set forth, if said patent or any reissue thereof should be litigated or contested at law or in equity by other parties.

19 Fourth. The said parties of the second part further covenant and agree to mark, stamp, or cast indelibly on each and every folding-guide used the words, patented October 5th, 1858; extended September 24th, 1872; reissued December 10th, 1872; licensed to —— —— only, or some intelligible abbreviation thereof.

Fifth. The said parties of the second part further covenant and agree that the said party of the first part, or his assigns, or his or their duly constituted agents, shall have the right and privilege, and shall be permitted at any reasonable time or hour, to visit and inspect the establishment of the parties of the second part where said folding-guides are and inspect and count the same.

Upon the failure of the parties of the second part at any time faithfully to carry out and perform any or either of the said above-mentioned conditions and promises, the said party of the first part, his executors, administrators, or assigns, may revoke and annul this

license, in which case this license and all rights and privileges of the parties of the second part herein shall forever cease and determine; but the said parties of the second part shall not be thereby relieved from any of the contracts or agreements on their part herein contained.

It is further distinctly understood and agreed between the parties as follows:

No folding-guide shall be, or is hereby, licensed unless it shall be marked or stamped as aforesaid, and while it shall be so stamped or marked.

It is further distinctly understood and agreed that this license is a personal privilege of the parties of the second part only, and is not to be, and cannot be, assigned, transferred, divided, shared, apportioned, or used in connection with any person not named herein.

It is further distinctly understood and agreed that the parties of the second part have no right or title of any kind in any folding-guide itself which is hereby licensed. Such guides are
20 not lawfully made, nor is any property for sale of the same vested in the parties of the second part, nor can they be transferred so as to vest any right to use the same in any party not named herein, but upon the expiration of this license they are to be delivered to said party of the first part if required, unless this license be renewed or a new license taken from the party of the first part.

In witness whereof the parties above named have hereunto set their hands and seals this — day of —, 187–."

As above stated, said reissued letters patent have been largely in controversy in the circuit court of the United States in suits founded thereon. I enumerate here a number of such suits, with results.

I commenced one suit in equity against one James Gilmour, and applied for a preliminary injunction. Such application was strenuously resisted by counsel; but a preliminary injunction was granted restraining the defendant from the use of all such folding-guides except four, for which he claimed to have a license. I also commenced a suit in equity against the firm of G. Sidenberg & Co.; and upon application for a preliminary injunction, such injunction was granted except as to certain folding-guides also then claimed to have been licensed. I also commenced suit in equity against the firm of Kursheedt, King & Co., in which an application for preliminary injunction was made, but not granted; but upon testimony being taken for the final hearing the defendants abandoned their defence, submitted to said letters patent, and a decrée was entered against them at the February term for the year 1874 of the circuit court for the southern district of New York. Said decree was as follows, as by the records of said court, to which I hereby for greater certainty refer, will fully appear:

21 At a stated term of the United States circuit court, held in

and for the southern district of New York, at the court-house in the city of New York, on the — day of —, 1873.

Present: Hon. L. B. Woodruff, judge.

GEORGE H. WOOSTER

vs.

FREDERICK A. KURSHEEDT, GEORGE E. KING, and ALEXANDER E. KURSHEEDT.

The defendants in this case voluntarily, by *his* solicitor, submitted to the decree upon the pleadings and proofs herein in favor of the complainant; it is thereupon ordered, adjudged, and decreed that Alexander Douglas was the first, true, and original inventor of the invention described and claimed in the letters patent granted to the said Douglass, October 5, 1858, for a folding-guide for sewing-machines, and in the reissue of said letters patent granted to the complainant December 10, 1872, No. 5180, and that said letters were duly granted and extended and assigned to the complainant and reissued as aforesaid, and that the defendants have infringed said letters patent by the manufacture and use of certain folding-guides for sewing-machines, to wit, folding-guides the guiding surface of which is so turned and folded that the material conveyed thereby is folded on both edges, and also folding guides the guiding surface of which is so turned and folded that the material conveyed thereby is folded at or near the centre and upon one edge.

22 And it is further ordered, adjudged, and decreed that the complainant is entitled to an account of the profits received by or which have accrued to the defendants by the manufacture, use, or sale of such folding-guides or any folding-guides infringing said reissued letters patent, and also to an assessment of damages received by the complainants by reason of the infringment of the defendants, and also to an injunction enjoining the defendants and each of them, and their clerks, agents, and workmen, from directly or indirectly infringing said letters patent.

And it is further ordered, adjudged and decreed that an injunction issue accordingly out of and under the seal of this honorable court, and that it be referred to Joseph Gutman, Jr., to take and state such account and assess said damages, and report thereon with all convenient speed.

And it is further decreed that the complainant recover the costs of this suit, and that all further direction be reserved.

(Signed) L. B. WOODRUFF,
Circuit J.

The defendants hereby submit to the foregoing decree.

M. A. KURSHEEDT,
Def'ts' Sol'r.

Endorsed: Filed March 6, 1874.

Said defendants took a license under said letters patent substantially in the form above set forth, paying a large sum of money therefor. I commenced actions of law founded upon said reissued letters patent in the circuit court of the United States for the south-

ern district of New York against the following-named persons: G. Schwab, Randal W. Roberts, and Thomas Dewitt, G. Straus & Julius Johnson, W. Ford, Lucius M. Stanton & Thomas G. Stanton, J. C. Glover, Nathalie Myerson & Hugo H. Plaut, L. Saunders, Adolph Cohen & Gutav Saenger, L. Lowenstein, A. Eisig, James Dunn, John Hallowell, & John Service. Of these all submitted to my
23 rights under said letters patent, and took licenses under the same in form above set forth, paying the fixed sums established by me for licenses for the number of folding-guides desired to be used of them, except the following, to wit: G. Schwab, Roberts & Dewitt, J. C. Glover, Myerson & Plaut, against whom said actions are still pending, and have not yet been reached for trial, but no defense has been set up in said actions against the validity of said letters patent.

I also commenced suits in equity against The Palmer Manufacturing Company, and against E. W. Taylor & Margaret Woodbury, and against John W. Simpson & Co., and against Michael Hertz, in the same court, and made motions for injunctions therein, which came on to be heard on the 28th day of November, 1874, before said court, and, after due consideration had, preliminary injunctions were granted by said court in each and all of said causes on the 21st day of December, 1874, and injunctions duly issued therein.

In the suits in equity against Kursheedt, King & Co., Palmer Manufacturing Co., and others large numbers of defenses have been set up and relied upon by the defendants. It has been claimed that the invention described and claimed in said reissue have been described in one or more of the following patents: that granted to Seth P. Chapin February 19, 1856; that granted James S. McCurdy February 26, 1856; that granted Henry L. Sweet December 20, 1853; that granted to Henry B. Nichols August 29, 1854, and January 30, 1855; but said defenses have been abandoned in the suits enumerated and are not true, as I verily believe, in fact.

In said suits it has also been claimed that prior knowledge or use of said invention described in said reissue has been had by one or more of the following persons:

Henry L. Sweet, Albert F. Johnson, John B. Nichols, John J. Sibley, John Gault, Nesbitt D. Stoops, Rufus Leavitt, Martin Leavitt, L. M. Hussey, William O. Grover, William E. Baker, Nathan-
24 iel Wheeler, John Van Winkle, Benjamin Trott, Charles Espe, Jonas Frazer, Miss Emma Bartlett, Miss Augusta Brown, Emery Farnsworth, James Bolton, Francis Potter, John W. Ripley, George Platts, Richard Blees, John T. Jones, John W. Watson, Trueman W. Repper, George Moore, George B. Sloat, Charles W. Thomas, Daniel Rice, Leander W. Langdon, Samuel J. Parker, Miles L. Clinton, Charles L. Clinton, Myron Clinton, George W. Thomas, Isaac M. Singer, Orson C. Phelps, Seth P. Chapin, James S. McCurdy, J. Melvin Brant, William H. Plummer, Salem Wilder, Rufus Leavitt, H. H. Blanchard, Charles H. Hitchcock, George A. Hitchcock, Robert Penrose, Hallis W. Cole, George Churchill, John M. Corlies, and James Penrose.

But said defences have been abandoned by said defendants, and are not true, as I verily believe, in fact. I verily believe that the said Alexander Douglas was the original and first inventor of each and all the inventions described and claimed in said reissued patent, and that said letters patent are good and valid in law.

Sworn to before me this — day of ——, 187–.

[L. S.] —— ——.

Circuit Court of the United States, District of ——.

GEORGE H. WOOSTER *agst.* —— ——.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

Alexander Douglas, being duly sworn, says: I am the
25 patentee of the original letters patent, dated October 5th, 1858, No. 21659, for an improvement in folding-guides for sewing-machines. I am — years of age. I reside in the city of New York. My occupation is that of a dealer in coal. I have no interest in this suit. My first application for the letters patent No. 21659 was made upon the 10th day of April, 1856. I put the invention described in said letters patent in use in my own establishment as early as the summer of 1854. The following is a copy of my first application for letters patent for my invention, afterwards granted on the 5th day of October, 1858.

Petition.

To the Commissioner of Patents:

The petition of Alexander Douglas, of New York, in the county of New York and State of New York, respectfully represents:

That your petitioner has invented a new and improved folding-guide for folding and turning in two edges of a piece of cloth or other material for binding or for other purposes preparatory to sewing, which he verily believes has not been known or used prior to the invention thereof by your petitioner.

He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty dollars into the Treasury and otherwise complied with the requirements of said act.

And he hereby authorizes O. D. Munn, S. H. Wales, and A. E.
Beach, of the firm of Munn & Co., or their accredited agents,
26 to act as his attorneys in presenting the application, and in making all such alterations and amendments as may be required.

ALEXANDER DOUGLAS.

Oath.

STATE OF NEW YORK, }
City and County of New York, } ss:

On this 9th day of April, 1856, before the subscriber, a commissioner of deeds in and for said county, personally appeared the within-named Alexander Douglas, and made solemn oath that he verily believes himself to be the original and first inventor of the within-described improved folding-guide for folding and turning in two edges of a piece of cloth or other material for binding, or for other purposes, preparatory to sewing, and that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

[Scientific American Seal. Munn & Co.]

M. S. BROWSHER,
Commissioner of Deeds.

The schedule referred to in these letters patents and making part of the same.

To all whom it may concern:

Be it known that I, Alexander Douglas, of the city, county, and State of New York, have invented a new and improved folding-guide for folding and turning in two edges of a piece of cloth or other material for binding or for other purposes preparatory to sewing; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing, forming part of the specification, in which—

Fig. 1 is a front view of my improved guide as adapted for binding and inserting two cords within the binding.

Figs. 2 and 3 are opposite end views of the same.

27 Fig. 4 shows a section of the binding and cording applied to the edge of a piece of goods.

Fig. 5 exhibits an end view corresponding with Fig. 3 of the guide as adapted for binding without cording.

Similar letters of reference indicate corresponding parts in the several figures.

This guide is formed by combining and arranging, as hereinafter described, two guides such as are described and claimed in the patent of S. P. Chapin, dated Feb. 19, 1856.

To enable others to make and use my invention I will proceed to describe its construction and operation.

The simplest method of constructing my improved guide is to take a plate of metal, A—say about ten (10) inches in length, and of a width somewhat greater than that of the strip or piece of cloth or other material which is to be folded—and have its edges turned in, and turn the whole length of both edges of the said plate towards each other, as shown at *a a* in the end view, Fig. 2, leaving just width enough between the two bends *a a* to receive the strip or piece of cloth in the manner indicated by the red line in Fig. 2, which represents a transverse section of the cloth.

The plate having its edges thus turned or bent has the bent edges turned again, the turn commencing at a short distance from the end shown in figure 2, and increasing towards the other end, shown in figure 3, till at the latter end the bends *a a* are turned towards each other and the edges of the plate away from one another. This second bend is represented at *b b* in Fig. 3.

The plate is then again bent near the middle, commencing at the end shown in Fig. 2, and increasing all the way to the other end, where the two ends *b b* come nearly together. This gives the edges of the plate the curved and twisted form shown in figure 1. The plate A is strengthened by narrow transverse pieces of plate *c c*,
which are secured to its edges and lie as close as practicable
28 to the convex side of the plate, just leaving space enough for the cloth to pass between them and the plate A.

By inserting a strip of cloth or other material between the bends *a a* at the end of the guide shown in figure 2, and drawing it towards the other end, the edges are gradually folded down and the strip folded in the middle till it assumes the form shown in Fig. 3 or Fig. 5, in red outline. The principal difference between the forms of the guides shown in Figs. 3 and 5 is that the bends *e* and *b* are made rounder in that shown in Fig. 3, as it is intended for the insertion of a cord, *d*, at the edge of the material to which the binding is to be applied, which is shown by blue outline in figures 3, 4, and 5, and another cord, *e*, in one turn of the binding, and this guide has tubes *g g* attached to conduct the cord *d*, as shown in figure 1. The guide shown in figure 5 is simply for folding and turning in both edges of a binding without cording.

To apply the binding to the edge of a piece of cloth or other material, the said edge is placed within the guide as shown in Figs. 3 and 5, and drawn along at the same time as the binding piece is drawn along. When no cording is inserted in the binding or only the cord *e*, it is only necessary to stitch it at the point shown by the line *x* in Figs. 4 and 5; but when a cord is required at the edge, and a broad binding is used, stitching will generally be required at the points *x* and *y*, the same as when two cords are used, though if a narrow binding be used, and the edges are turned in far enough, one line of stitching will suffice. The guide when applied to a sewing-machine will stand in the position shown in Figs. 1, 2, 3 relatively to the horrizontal bed of the sewing-machine, which is indicated by Figs. 1 and 3 by the line *f f*, and will be provided with a plate, *i*, through which to insert a screw to attach it to the bed *f f*.

One great advantage of this guide is that it allows strips of raw edged material, without a selvedge, to be used for binding purposes.
Another is that it enables cords to be put in at the edges of
29 the binding as well as at the fold thereof, which, I believe, can be done by no other guide in use.

I do not claim the single guides as formed by the bends *a b* and *a b*^{1} for turning in the edges of the cloth singly, as those are like the guides of S. P. Chapin, as claimed by him in his patent hereinbefore named.

But I claim as new and my invention :

The compound guide herein described, composed of the two simple guides *a b* and *a* b^1, combined and arranged in any way substantially as herein described, to fold and at the same time turn in the two edges of a strip or piece of cloth or other material.

ALEXANDER DOUGLAS.

Witnesses:
O. D. MUNN,
S. H. WALES.

Endorsed: Rec'd and filed April 10, '56. L. T. W.

Before and after the grant of said letters patent I used the invention described therein largely in our business. I made several forms of said invention, which are specifically claimed in the reissued letters patent upon which this suit is brought. I used said invention very largely in my business of a skirt manufacturer, which I carried on for many years in the city of New York in the firm of Douglass & Sherwood. According to my experience the invention described in said letters patent is one of very great utility. Prior to my invention it had been the practice to turn by hand bindings which were made of raw-edged material for the purpose of using the same upon the edges of garments. My invention permitted the same work to be done automatically in connection with the sewing machine, and increased the speed of such work at least fivefold. One girl with a sewing-machine provided with one of my folding-guides could bind or band as much work as five or six could do without the use of such guide.

During the original term of said letters patent I made earnest endeavors to protect the same in the courts, and was uniformly successful. I brought many suits at law in the circuit court of the United States for the southern district of New York founded upon said letters patent. The names of the several defendants in said suits were as follows:

M. A. Kursheedt, J. Spitzer & E. Lowenstein, Metz & Rosenbaum, Robert Leland, B. Luffler, S. Trischet & J. Bevan, Charles Pierce, and William Campbell. All of these defendants except Pierce and Campbell submitted to my rights under said letters patent, and took licenses in the following form:

Article of agreement made and concluded this — day of ——, in the year of our Lord one thousand eight hundred and sixty-three, by and between Alexander Douglas, of English Neighborhood, in the county of Bergen and State of New Jersey, and Samuel S. Sherwood, of Acquackanonck, in the county of Passaic and State of New Jersey, parties of the first part, and —— ——, part- of the second part, witnesseth: Whereas the United States of America did on the fifth day of October, in the year of our Lord one thousand eight hundred and fifty-eight, grant letters patent to the said Alexander Douglas, then of the city of New York, for an improvement in folding-guides; and whereas the said Alexander Douglas did, by an instrument in writing, under his hand and seal, and bearing date the 21st day of August, 1863, sell and convey to the said Samuel S. Sherwood one equal undivided half part of the said invention as

secured by the said letters patent; and whereas the said part- of the second part is desirous of using the said folding-guide in his manufactory:

Now, therefore, the said parties to this agreement do mutually and severally agree as follows:

The said parties of the first part, for and in consideration of the sum of fifty dollars to them in hand paid, the receipt of which is by them hereby acknowledged, agree to grant, and do hereby
31 grant, to the said part- of the second part, their license and privilege to use the said folding-guide in the manufactory of the said part- of the second part in —, and in no other place or places, and to make the same for — use only to the full end of the term for which the said letters — were granted or may be reissued, subject, nevertheless, to the conditions and restrictions hereinafter stated; and the said parties of the first part further agree to furnish to said part- of the second part, at his request and upon reasonable notice, a stamp for each of as many folding-guides as the said part- of the second part may require in — business, which stamps shall indicate the date at which said letters patent were granted, and which shall be properly constructed to be affixed to the said folding-guides, upon payment by the said part- of the second part to the said parties of the first part of the further sum of five dollars for each of the stamps so used, as a compensation for the use of each folding-guide, over and above the sum of fifty dollars above named.

And the said part- of the second part, hereby acknowledging the full force and validity of the aforesaid letters patent, agree-, in consideration of the herein-above-stated premises, to pay to the said parties of the first part, in addition to the sum of fifty dollars above named, the further sum of five dollars as a further consideration and compensation for the privilege of using *for* each of the said folding-guides used by the said part- of the second part during the term for which the said letters patent were granted, and to affix to each of the said folding-guides, before using it, a stamp indicating the date of the patent and obtained from the said parties of the first part, as above stated, and to pay to the said parties of the first part the sum of five dollars on each of the said stamps on obtaining them as aforesaid.

And it is further understood and agreed by and between the said parties to this agreement that if the said part- of the second part shall at any time during the term for which the said letters patent were granted use in — factory any such folding guide or
32 guides without having first paid to the parties of the first part the sum of five dollars as an additional compensation for the right to use the same, or without having obtained from the said parties of the first part a stamp indicating the date of the aforesaid patent for each of the said folding-guides, and affixing the same thereto; or if the said part- of the second part shall during the said term use such folding guides elsewhere than at — factory, or sell or loan or in any way furnish them to others to be used, whether stamped as aforesaid or not, the license hereby granted by the said parties of the first part to the said part- of the second part to use the said in-

vention shall be utterly null and void, and the said party of the second part shall forfeit whatever amount — shall have paid to the said parties of the first part on that account; and the said part- of the second part shall also in that case be deemed guilty of infringing said patent by whatever manufacture, use, or sale- — may have made of the said folding-guides.

In testimony whereof we, the said parties to this agreement, have hereunto set our hands and seals the day and year first above written.

——— ———.
——— ———.

Signed, sealed, and delivered, being first duly stamped, in presence of us—

——— ———.
——— ———

The action against said defendants, Pierce & Campbell, was brought on for trial before Mr. Justice Shipman and a jury on the 13th day of April, 1864, and the defendants not appearing an inquest was taken and verdict rendered by the jury for the sum of five hundred dollars, upon which judgment was entered. The followihg is a transcript from the record of the clerk of said court of the proceedings upon said trial, to which original record I here for greater certainty refer:

WEDNESDAY, *Aprit* 13, 1864.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Judge Shipman.

33 ALEXANDER DOUGLAS *et al. vs.* CHARLES PEARCE *et al.*

On motion of Mr. How, ordered inquest.

Jurors sworn: Frederick Olmstead, Peter Berg, Ledyard Avery, Bernard Crawford, Edward Moore, David Bedell, Godfrey Bierns, George W. Todd, Edward W. Ketchum, Thomas Clauson, Joseph McGrelly, F. Reinhir.

Mr. How opens the case on the part of the plaintiffs.

Evidence for the plaintiffs:

Melissa Warren, sworn.
George H. Wooster, "
Alexander Douglas, "
Charles P. Benedict, "

The court thereupon charge the jury, who retire in charge of an officer duly qualified to attend them, and, on their return, say that they find a verdict for the plaintiffs in the sum of five hundred dollars, and so say they all.

During my ownership of said original patent I also granted numerous other licenses to other persons in the same form above set forth. The names of such licencees are as follows: H. Hollingsworth, the Fancy Goods Manufacturing Company, Emanuel Bien,

L. H. Mandlebaum, L. Dryfoos, L. S. Robbins, H. Boen, Herman and Lautenbach, Bernard Loeffler, Elm City Co., G. Sidenberg, Thompson, Langdon & Co., G. P. Merwin, George H. Wooster.

34 I never granted any other licenses to any person or persons whatever other than those above named, nor have any person or persons other than those above named any right whatever to use the inventions described in the letters patent upon which this suit is brought from, through, or under me.

On the 5th day of May, 1864, I was obliged, in order to pay a debt, to sell the original term of said letters patent, with others, to Messrs. Wheeler & Wiley, and thereafter had no interest whatever in said original term. I have been informed by Mr. Wheeler that no licenses whatever were granted by him or them during their ownership of the original term of said letters patent. Prior to the time that said original letters patent expired I made application in due form to the Commissioner of Patents for an extension of the same. Upon the same having been granted, I sold and assigned said extended letters patent to Mr. George H. Wooster, the complainant, and have now no interest whatsoever in the same.

I verily believe that I am the original and first inventor of each and all of the improvements and inventions described and claimed in the reissued letters patent upon which this suit is brought.

ALEXANDER DOUGLAS.

Sworn to this 15th day of Jan., 1875, before me.

[L. S.] T. J. MACVEY,
Notary Public, N. Y. City and County.

35 Circuit Court of the United States for the —— District of ——.

GEORGE H. WOOSTER *vs.* —— ——.

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York,* } *ss:*

—— ——, being duly sworn, says I am of mature age; I reside at ——, and am by occupation a ——.

On the — day of ——, 187—, I visited the establishment of the defendant above named at ——, and there saw in use, or ready for use, about —— folding-guides for sewing-machines of the following description:

At least — of said guides were composed of a plate of metal so turned upon itself that it was adapted to enclose and did enclose strips of raw-edged material to be guided through it, and formed an enclosed channel-way for such material. The guiding surface of these guides was so turned and folded as to gradually and simultaneously fold the material guided through the same at or near the centre and upon both edges.

About — of said guides were constructed of plates of metal folded so as to form such enclosed channel-ways for the material to be guided, and the guiding surfaces were so turned as to gradually and simultaneously fold the material upon each edge.

These guides were being used in the defendants' business of —.

36 I am familiar with the reissued letters patent of George H. Wooster for an improvement in folding-guides for sewing-machines, dated December 10, 1872, No. 5180, and believe I understand the nature of the invention therein described and claimed, and the several forms thereof specified.

The guides of the defendants did not differ in any material respect from those described in said letters patent for producing the same effect.

I annex hereto samples showing the construction of the defendants' guides.

These samples represent accurately all of these features. The defendants' guides were used in connection with sewing-machines, and were so adjusted to the machines as to deliver the folded material in the track of the needle so as to have the folds stitched down.

Sworn to this — day of ——, 187—.

——— ———.

(Endorsed:) U. S. circuit court. George H. Wooster ag'st Solomon Moses *et al.* Bill of complaint. Andrew Comstock, compl't's sol'r, 71 West Broadway. U. S. circuit court. Filed Dec. 20, 1880. Joseph M. Deuel, clerk.

37 U. S. Circuit Court, Southern Dist. N. Y.

GEORGE H. WOOSTER *vs.* SOLOMON MOSES *et als.*

Please take notice that I am retained by and appear for the defendants in the above-entitled action.

(S'g'd) JOSEPH J. KOCH,
Att'y for Def'ts, 320 *B'dway, N. Y.*

Joseph M. Deuel, clerk.

(Endorsed:) U. S. circuit court. George H. Wooster *vs.* Solomon Moses *et al.* U. S. circuit court. Notice of appearance. Joseph Koch, att'y for def'ts, 320 B'dway. Filed Feb. 5, 1881. Joseph M. Deuel, clerk.

38 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER
vs.
SOLOMON MOSES, GOTCHO BLUM, & SOLOMON WEILL.

The answer of the defendants to the petition and bill of complaint herein respectively shows to this court that the said defendants are copartners in business herein; that they each and severally show that they have not sufficient knowledge or information to form a belief as to the truth of the allegations contained in said bill of complaint between the 14th and 15th folios, inclusive, and therefore upon belief deny the same.

Further answering, these defendants, upon information and belief, show that the folding-guides used in and about the premises

and manufactory of these defendants were used by and with the permission of a person named Pipo, who had the right, as these defendants are informed and believe, to use and give permission to use and continue the use of the same.

And, further answering, these defendants deny each and every allegation contained in said bill of complaint, except as by this answer specifically admitted.

Wherefore these defendants ask that said bill of complaint be dismissed, with costs, and the prayer therein contained denied.

SOLOMON MOSES.
GOTCHO BLUM.
SOL. WEILL.

JOSEPH KOCH,
Att'y for Def't-, 320 *B'way.*

39 UNITED STATES OF AMERICA, *Southern District of New York:*

On this 30th day of April, 1881, before me personally came Solomon Moses, Gotcho Blum, and Solomon Weill, to me personally known, who, being severally by me duly sworn, did depose and say that they are the defendants in the foregoing answer; that they and each of them have read the foregoing answer and know the contents thereof, and that the same is true of their own knowledge, except as to the matters which are therein stated to be on information and belief, and as to those matters they believe it to be true.

BYRON A. COHEN,
Notary Public, N. Y. C.

(Endorsed:) U. S. circuit court. George H. Wooster *vs.* Solomon Moses *et als.* Answer. Joseph Koch, attorney for defendants, 320 Broadway, N. Y. City. (U. S. circuit court. Filed May 2, 1881. Joseph M. Deuel, clerk.)

40 United States Circuit Court, Southern District of New York.
In Equity.

GEORGE H. WOOSTER, Complainant,
vs.
SOLOMON, MOSES, GOTCHO BLUM, and SOLOMON WEILL, Defendants.

To the honorable Samuel Blatchford, judge of the U. S. circuit court, southern district of New York.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the answer herein, for replication thereunto, says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, and that any other matter or thing whatever in said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready

to aver and prove as this honorable [court] shall direct, and humbly prays as in and by said bill he has already prayed.

Dated New York, May 16th, 1881.

ANDREW COMSTOCK,
Complainant's Solicitor, 240 *B'way, New York.*

41 (Endorsed:) United States circuit court. George H. Wooster *vs.* Solomon Moses *et al.* Replication. Andrew Comstock, complainant's solicitor, 240 Broadway. (U. S. circuit court. Filed May 17, 1881. Joseph M. Deuel, clerk.)

42 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held in the court-rooms, in the Post-office building, in the city of New York, on the 29th day of August, 1881.

Present: Hon. Samuel Blatchford, circuit judge.

GEORGE H. WOOSTER

ag'st

SOLOMON MOSES, GOTCHO BLUM, and SOLOMON WEILL.

This cause being at issue, and the complainant being prepared to make out his *prima facie* case, the defendants, by their counsel, waiving the necessity and consenting to the entry of an interlocutory decree, as by the consent hereto annexed appears:

Now, therefore, after due deliberation and upon such consent, it is ordered, adjudged, and decreed that the letters patent of the United States issued to Alexander Douglas, dated October 5th, 1858, No. 21659, for an improved folding-guide, which letters patent were extended for seven years from the 5th day of October, 1872, and duly assigned to George H. Wooster, complainant herein.

And the said patent having been reissued to said complainant on the 10th day of December, 1872, and numbered 5180,

43 was good and valid in law.

That the said Alexander Douglas was the first and original discoverer and inventor of the devices and inventions claimed and described in said letters patent and in the specifications annexed thereto, and that the complainant, George H. Wooster, is the exclusive owner of said reissued letters patent.

That the defendant- has infringed upon said reissued letters patent and upon the exclusive rights of the complainant under the same—that is to say, by buying and using, or causing to be used, folding-guides as described and claimed in said letters patent.

And it is further ordered, adjudged, and decreed that the complainant do recover of the defendant- the profits, gains, and advantages which the defendants have derived, received, or made by reason of the infringement of the complainant's patent, as set forth in the bill of complaint, by any use thereof, and also that the complainant do recover any and all damages he has sustained by reason of any infringement of said letters patent by the defendants.

And it is hereby referred to John A. Shields, Esq., as *pro hac vice*

a master of this court, to take and state the account of said gains, profits, and advantage, and to assess such damages, and to report thereon with all convenient speed.

And the defendants, and each of them, are hereby directed and required to attend before said master from time to time as required, and to produce before him such books, papers, documents, and devices used as relate to the matters at issue, and submit to
44 such oral examination as the said master may require.

And it is further ordered, adjudged, and decreed that the complainant do recover of the defendants his costs and charges and disbursements of this suit, and that the question of an increase of damages and all other questions be reserved until the coming in of the master's report.

SAM'L BLATCHFORD.

I hereby consent to the entry of the within interlocutory decree. New York, August 25, 1881.

JOSEPH KOCH,
Def'ts' Solicitor.

(Endorsed:) U. S. circuit court. George H. Wooster ag'st Solomon Moses *et al.* Interlocutory decree. Andrew Comstock, compl't's sol'r, 240 Broadway. (U. S. circuit court. Filed Aug. 20, 1881. Joseph M. Deuel, clerk.)

45 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER

ag'st

SOLOMON MOSES, GOTCHO BLUM, and SOLOMON WEILL.

You will please take notice that having been appointed a master *pro hac vice* by the interlocutory decree duly entered in this action, that you, and each of you, are required to appear before me at my office, room 78, in the Post-office building, in the city of New York, on the 8th day of October, 1881, at 2 o'clock in the afternoon, and proceed with such accounting with all reasonable diligence.

Dated New York, Oct. 1, 1881.

JOHN A. SHIELDS,
Master, &c.

To Andrew Comstock, Esq., compl't's sol'r, & Joseph Koch, Esq., def'ts' sol'r.

(Endorsed:) U. S. circuit court. George H. Wooster ag'st Solomon Moses *et al.* Notice of master. John A. Shields, master *pro hac vice.* Service of a notice, of which within is a copy, is hereby admitted. N. Y., Oct. 3, 1881. U. S. circuit court. Filed Oct. 26, 1882. Joseph M. Deuel, clerk.

46 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER
ag'st
SOLOMON MOSES, GOTCHO BLUM, and SOLOMON WEILL.

Reference before John A. Shields, master, &c., per order of court dated August 29th, 1881.

47 NEW YORK, *Oct.* 8, 1881.

Present: Andrew Comstock, Esqr., on part of comp't.

Complainant's counsel requests the master to make an order that the defendants attend before said master at his office, room 78, Post-office building, New York city, on the 15th day of Oct., 1881, at one o'clock p. m., and then and there produce a sworn statement and account of number of folding-guides made or used or kept on hand by the defendants or their agents or employees, and covered by the decree in this case, between the 10th day of December,
48 1872, and the 5th day of October, 1879, and there and then produce a sample of each and every kind so made or used or kept on hand, and by whom made; also a statement as to when such guides were used, and how long they were used; also the number of yards folded by use of the same.

The master orders that the defendants attend before him at his office, room 78 Post-office building, New York city, on the 15th day of Oct., 1881, at one o'clock p. m., and then and there produce a sworn statement and account of the number of folding-guides
49 made or used or kept on hand by the defendants or their agents or employees, and covered by the decree in this case, between the 10th day of December 1872, and the 5th day of October, 1879, and there and then produce a sample of each and every kind so used or kept on hand, and by whom made; also a statement as to when such guides were used and how long they were used; also the number of yards folded by use of the same.

The master adjourns the hearing until the 15th day of October, 1881, at one o'clock p. m.

NEW YORK, *August* 25, 1881—11 o'clock a. m.

50 Met pursuant to adjournment.
Present: Counsel as before.

It is consented that the court enter herein the usual interlocutory decree in such cases.

And it is further consented that John A. Shields shall be appointed master *pro hac vice* in such decree.

NEW YORK, *October* 15*th*, 1881—1 o'clock p. m.

Met pursuant to adjournment.

Present: A. Comstock, Esqr., of counsel for comp't, and George H. Wooster, Esq., the complainant in person. and Joseph Koch, Esqr., is represented by Edward Goltschell, of counsel for def'ts.

51 Def'ts counsel requests an adjournment.

Comp't's counsel requests the master, inasmuch as the def'ts have not complied with the order heretofore made and served upon them, that the master direct and require that the def'ts serve upon comp't's counsel by Wednesday, Oct. 19, 1881, a copy of the sworn statement, as required by said order, and that the said order be continued until the adjourned day herein. And comp't's counsel also gives notice that unless said order is complied with he shall
52 move for an attachment against the def'ts.

Adjourned by consent to Friday, Oct. 21, 1881, at 1 p. m.

NEW YORK, *October 21st*, 1881—at 1 p. m.

Met pursuant to adjournment.
Present: Counsel for respective parties.

SOLOMON MOSES, sworn as a witness, says:

Q. 1. What business are you engaged in?
A. Manufacturing shirts.
Q. 2. You are a member of the firm of Moses, Blum & Weil?
A. Yes, sir.
Q. 3. How long have you been engaged in such business?
A. About 12 years.
53 Q. 4. Where is your firm's place of business?
A. 74 Leonard St., N. Y. city.
Q. 5. How long have you been engaged in business at that place?
A. About 5 years.
Q. 6. Where was your firm's place of business previous to that?
A. I think 86 Leonard St.
Q. 7. How long was your firm engaged in business at that number?
A. 2 years.
Q. 8. When was the firm of Moses, Blum & Weil formed?
A. About 1870.
Q. 9. Has your firm been engaged in the same business since its formation to the present time?
A. Yes, sir.
54 Q. 10. What other stores have your firm occupied besides the ones stated?
A. We occupied one in Worth St., between B'way & Church, and also on Duane, between West Broadway & Church.
Q. 11. In your manufacturing business did your firm use machinery of any kind?
A. Yes, sir; some.
Q. 12. Since the 10 Dec., 1872, have you employed any machinist to make or repair machinery in your factory?
A. Not to my personal knowledge.
Q. 13. If your firm had machines made or repaired by any machinist would your books show the payment therefor for the work done, and to whom?
55 A. I don't really know.

Q. 14. Do your firm have a book-keeper.

A. Yes.

Q. 15. Does he pay bills?

A. No.

Q. 16. Does he enter on the books the amounts of bills paid by the firm?

A. Yes.

Q. 17. Does your books show moneys paid for bills?

A. Yes; for some.

Q. 18. Have you between the 10 Dec., 1872, and the 5 Oct., 1879, had in your employ any machinist to make or repair sewing-machines or attachments or other machinery?

A. I don't remember.

Q. 19. Is that your best knowledge?

56 A. I think it is.

Q. 20. What member of your firm would have knowledge of the above fact?

A. None of them.

Q. 21. What person in your employ, if any, would have this knowledge?

A. Our foreman or superintendent.

Q. 22. Please give the name of your foreman in your employ on the 10th day of December, 1872, to the 5th day of October, 1879, and, if more than one, the names of each, and the length of time each occupied such position in your factory.

A. Mr. Charles Wales for about 2 years from 1872; Mr. Riesner from 1874 up to about 1876; Mr. Albert Borchard from 1876

57 up to October, 1881.

Q. 23. Did your foreman order such machines or machinery to be made or repaired in your factory without consulting with some member of the firm?

A. Yes, sir.

Q. 24. Do you know where Mr. Wales is?

A. Yes, sir.

Q. 25. Please state where he is.

A. He is working as a cutter in New York city. I don't know where, but I can find out, and will if requested.

Q. 26. Do you know the whereabouts of Mr. Riesner?

A. Yes; he is in our employ now.

Q. 27. Do you know the whereabouts of Albert Borchard?

58 A. I went over to New Jersey yesterday morning to enquire. I ascertained that he is in Bridgeport, Conn.

Q. 28. Did you ascertain what his street number is or with whom he is stopping in Bridgeport?

A. He is with his brother in business in Bridgeport. I do not know the street or number. I can produce him here if required. I think his brother's name is Hugo.

Q. 29. You were required by order of the master to make a sworn statement and account at this meeting, were you not?

A. I was.

Q. 30. Have you made such account and statement?

A. I have not.

59 Q. 31. Have you prepared any part of that account?

A. I have not, because I could not.

Q. 32. Is the reason given in this affidavit produced here and sworn to by you October 20th, 1881?

A. It is.

Q. 33. Is that the only reason?

A. That is the only reason.

Q. 34. In your manufactory, when you are making up stock, is there any account kept of it?

A. We keep a stock-book.

Q. 35. When you sell goods is there any charge or entry made of the sales and of the kinds of goods?

A. There is an entry made of the sales and the kinds.

60 Q. 36. Do you in your business keep what is called an order-book when orders come in?

A. We do when orders come in, but it is not a book that is kept long.

Q. 37. What is the next charge made from that order-book, or, in other words, are orders taken from that book and entered in any other book?

A. They are entered in the sales-book from the order-book.

Q. 38. You state in this affidavit that Mr. Borchard was in your employ from 1876 to 1881, and ascribe as a reason his absence for not making up your account as required by the order. Is it possible he could assist you between the years 1872 and 1876 in making such account?

61 A. He could not. From 1872 to 1876 he was not in our employ.

Q. 39. Do you know the name of any machinist who at any time since 1872 did any work for your firm?

A. I do not, as I never paid any attention to the names of our workmen.

Comp't's counsel asks for an order that these defendants, in addition to the order already made herein, that the said defendants be required to produce before the master a stock book and all order books and sales books used in their business between the 10th day of December, 1872, and the 5th day of October, 1879, and any

62 other books that will show when any machinery or attachments were purchased or sold or made for the defendants.

The master orders accordingly.

The master adjourns this case to Friday, October 28th, at 12 o'clock noon.

NEW YORK, *October 28th*, 1881—12 o'clock m.

Met pursuant to adjournment.

Present: A. Comstock, Esqr., of counsel for comp't, and George H. Wooster, Esq., the complainant, in person, and adjourned to Monday, October 31st, 1881, at 11 a. m.

63 NEW YORK, *October* 31*st*, 1881.

Met pursuant to adjournment.

Present: A. Comstock, Esq., of counsel for comp't, and George H. Wooster, Esq., the complainant, in person, and Joseph Koch, Esq., of counsel for def'ts.

SOLOMAN WEIL, a witness produced under the order of the master, being duly sworn, deposes and says:

Q. 1. Are you one of the firm of Moses, Blum & Weil, def'ts herein.

A. I am.

Q. 2. Have you produced the stock books and sales books used in your business between the 10th of Dec., 1872, and the 5th
64 of Oct., 1879, as required by the order of the master under date of Oct. 21st, 1881?

A. Yes, sir; a lot of books were brought to this office this morning.

Q. 3. Will you look at the books brought here from your place of business and see whether they are the books called for by the order above referred to?

A. I produce nine small order-books and one stock-book and four sales-books.

Q. 4. Do the order-books date back or include the time between Dec. 10th, 1872, and Oct. 5th, 1879?

A. They do.

Q. 5. How in regard to the sales-books?

A. From Oct., 1875, up to and including October 13, 1879.

65 Q. 6. What period of time does the stock-book cover?

A. I can't tell you that; I don't know. There are no dates there; there are months, but there are no years.

Compl't's counsel asks that the books be marked for identification for the present, and they are so marked.

The order-books from A to and including I, and the sales-books from 1 and including 4, and the stock-book marked J.

And comp't's counsel asks for an order that the def'ts be directed to fully comply with the orders heretofore made by the master
66 herein, and that the def'ts be also required to produce a sample of each kind of garment made by them with the help or guides covered by the decree herein under the number which they were manufactured or sold, together with all books tending to show or relating in any manner to the goods manufactured by the use of said guides; and it is so ordered.

Adjourned by consent to Friday at 12 m. for def'ts to produce said account and comply with the orders heretofore made herein.

NEW YORK, *November 4th*, 1881—12 o'clock m.

Met pursuant to adjournment.

67 Present: A. Comstock, Esq., of counsel for comp't, and George H. Wooster, Esq., the complainant, in person, and Joseph Koch, Esq., of counsel for def'ts.

Adjourned to Friday, Nov. 11th, 1881, at 11 a. m.

NEW YORK, *November 11th*, 1881—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The master adjourns the further hearing in this case to Friday, Nov. 18, 1881, at 10 o'clock a. m.

NEW YORK, *November 18th*, 1881—10 o'clock a. m.

Met pursuant to adjournment.

68 Present: Mr. A. Comstock, of counsel for comp't, and the comp't in person, and Franklin Bien, representing Mr. Koch, counsel for def'ts.

In pursuance of the orders heretofore made and served, def'ts' counsel produces the statement heretofore demanded by the comp't, and the same is marked Exh. No. 1, November 18th, 1881, for identification.

Examination of Mr. WEILL continued.

Q. 7. Have you produced a sample guide as required by the order heretofore made, and like the guides which, you state in the
69 return made, you or your firm used in the years 1876, '7, '8, and '9?

A. I don't know of any guide that we have had.

Q. 8. Have you produced samples of goods manufactured by you or your firm during those years, as shown in your statement, by the use of such guide, as required by the order heretofore made herein?

A. We keep no samples of anything after the stock is sold out?

Q. 9. You state in your return that in the year from December, 1876, to December, 1877, there were manufactured by the use of such guide 200 doz. garments. Will you please state what those garments were?

A. I don't know, because I never attended to that department.

70 Q. 10. Have you tried to produce a sample of any one of those 200 doz. garments made within that time here to-day?

Obj. to as immaterial. Obj. overruled and exception taken.

A. Mr. Burchardt is the gentleman who could give all the information. I don't know what the samples were.

Q. 11. Mr. Burchardt has made oath to this statement or return of yours, has he not, as appears by the same?

Obj. to—1st, as the paper speaks for itself; 2d, as irrelevant, immaterial, and incompetent. Objection sustained.

71 Q. 12. You had notice and knew what this order made October 31st, 1881, required you to produce here, and were present, with your counsel, when the same was made by the master, were you not?

A. I was present when the last order was made.

Q. 13. Have you produced here the books from which Mr. Burchardt has made this statement sworn to Nov. 18th, 1881?

Obj. to—1st, as immaterial; 2d, as all the books referred to in that statement have been produced and marked for identification, except one. Objection overruled and exception taken.

72 A. The books were all produced the last time I was here, with the exception of one stock-book, which was being used.

Q. 14. Did Mr. Borschardt obtain his information from the books that were produced, as stated in your last answer, if you know?

A. I do not know.

Q. 15. Who employed Mr. Borschardt to make up that statement?

Obj. to as impertinent. Obj. overruled and exception taken.

A. I don't know. Nobody that I know of.

Q. 16. When did you last see Mr. Borschardt?

73 Obj. to as immaterial. Obj. overruled and exception taken.

A. I passed him on the street yesterday.

Q. 17. Did your firm have a forewoman in their manufacturing business during the years 1876, '7, or '8 in their employ?

Obj. to as immaterial. Obj. overruled and exception taken.

A. I don't know.

Q. 18. Did your firm employ any hands during the years 1876, '7, '8, or 9 in their manufacturing business? And, if so, please give their names.

Obj. to as immaterial, and should be asked as to those hands who used those guides. Obj. overruled and exception taken.

74 A. I do not know who they employed in the manufacturing department. They had some work-people, but I cannot give their names.

Q. 19. Can you give any of their names and time when they were employed?

A. I cannot in the manufacturing department.

Q. 20. Of none?

A. Excepting Mr. Borschardt.

Q. 21. Have you or your firm no memorandum, paper, or book by which you could ascertain?

A. I don't know.

Q. 22. About how many hands did your firm employ in the manufacturing department during those years?

A. I cannot tell.

Q. 23. About how many is the question.

75 A. I can't even answer that.

Q. 24 Did they employ more than one?

Def'ts' counsel objects to any question referring to anything but the manufacturing department, and also asks that the question be made more specific. Obj. overruled and exception taken.

A. I was not in the manufacturing department. I suppose they did. I never attended to the manufacturing department.

Q. 25. How many more?

A. I don't know. There might have been 25 or 30 hands in the house.

Q. 26. Did your firm during those years employ a sep-
76 arate book-keeper for their manufacturing department?

Obj. to as immaterial. Obj. overruled and exception taken.

A. I don't know.
Q. 27. Would you know if they did?
A. I would not.
Q. 28. Do you know whether your firm employed any book-keeper or not during those years?
A. They had a book-keeper in the office.
Q. 29. Who paid the employees of your manufacturing department?

Obj. to as irrelevant and immaterial. Obj. overruled and exception taken.

77 A. I don't know, sir.

Q. 30. Who employed the hands in the manufacturing department during those years or at any time?

Same objection. Same ruling and exception.

A. I don't know who employed them.
Q. 31. Did you at *at* any time?
A. I did not.
Q. 32. What member of your firm, if any, did?
A. If any member of the firm did employ them Mr. Moses did.
Q. 33. Where is Mr. Moses now?
A. Mr. Moses is in Europe.

Q. 34. During the years 1876, '7, '8, and '9 how many sales-
78 men did your firm employ to sell the goods mentioned in the return and others, and what were their names?

Obj. to as far as it applies to any other goods but those mentioned in the return. Objection sustained.

A. They had one salesman who sold a general line of goods. His name was P. A. Phillips.
Q. 35. Is that the salesmen that your firm employed?
A. That is all they employed.
Q. 36. Have you produced here his order-book?
A. I think his orders were put in Mr. Moses' book.

Q. 37. Do you know whether they were or not?
79 A. I think so. I think Mr. Moses copied the entries from the original ticket into his book. If Mr. Phillips has or had a book I will produce it.

Q. 38. What do you term these books (pointing to 9 small books) in your business?
A. Sales-books.
Q. 39. Does your firm keep a record or book showing the payments to any person of cash?

Obj. to as immaterial. Obj. overruled and exception taken.

A. I don't know. Mr. Blum attended to the office.

Q. 40. Do you mean to swear that you do not know whether your firm kept a cash-book or not?

80 Obj. to on the ground that the witness is already under oath and is swearing all the time. Obj. overruled and exception taken.

A. I knew of nothing appertaining to the office.

Q. 41. Question repeated.

A. I answered that.

Q. 42. Question repeated.

A. I do not know whether they did or not.

Q. 43. If they had would you have known it?

A. I would not.

Q. 44. Have you produced here to-day your stock-book which you say you did not produce at the last meeting?

A. I have not.

81 Q. 45. During the years from Dec. 10th, 1872, to Oct. 5th, 1879, has your firm employed any other salesman except Mr. Phillips?

Obj. to on the ground that it appears by the evidence that these guides were not used by def'ts before Dec., 1876. Obj. overruled and exception taken.

A. Yes, sir; a man by the name of Elias Oppenheimer. That is all I know of. He may have been with us from 1871 to 1874; I think so.

Q. 46. Who was your foreman from Dec., 1872, to the time when Borschardt was employed?

A. I don't know.

Q. 47. Would your books show?

82 A. That I can't answer, as I never was in the office, and don't know whether they would or not.

Q. 48. What is your present book-keeper's name?

A. E. L. Lersner.

Q. 49. How long has he been in the employ of your firm?

A. I think about 5 or 6 years.

Q. 50. Did he have an assistant to aid him?

Obj. to as immaterial. Obj. overruled and exception taken.

A. I think not.

Comp't's counsel asks, inasmuch as the orders made by the master herein Oct. 8th, 21st, and 31st not having been complied
83 with or any sufficient reason having been shown why they have not been complied with, that an attachment for contempt be issued against them, and particularly the defendant, Solomon Weill.

The master states that he will take the request of compl't's counsel into consideration, and adjourns the further hearing of this cause to Friday, November 25th, 1881, at 10 o'clock a. m.

NEW YORK, *November 25th*, 1881—10 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

84 Owing to the illness of the master, the case is adjourned by consent to Wednesday, November 30th, at 10 o'clock a. m.

NEW YORK, *November 30th*, 1881—10 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Adjourned, by consent, to Friday, December 6th, at 2 o'clock p. m.

NEW YORK, *December 6*, 1881—2 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel as before; also George H. Wooster, Esq., in person.

The examination of SOLOMON WEILL resumed.

Q. 51. Please give the names of all men employed as por-
85 ters or stock-keepers in your establishment during the period of this accounting.

Objected to; overruled & exception.

A. There is only one man that I recollect, of the name of Schmidt, that was porter & had charge of the stock during those years in the question, from 1872 to 1880, and is in our employ now.

Q. 52. Is he the only porter & stock-keeper you have had?

A. The only one I know of.

Q. 53. Have you but one porter now?

Objected to; sustained.

Q. 54. Would you be likely to know all the porters you had in your employ during all that period covered by the accounting?

86 A. If there were any other porters there whilst I was not travelling I would be apt to know them.

Q. 55. How long a time and during what months were you travelling in the year 1879, before Oct. 5, 1879?

Obj. to; overruled; exception.

A. I can't exactly state the months, but when I did travel I was gone 6 to 7 weeks at a time.

Q. 56. And did you go out more than twice a year and stay 6 or 7 weeks?

Objected to; overruled; exception.

A. I can't say whether I went out in that year more than twice, but I have gone out other years 3 & 4 times.

87 [Q.] 57. Is it not your habit to start out before the commencement of the busy season—before the spring and in the fall—with samples to visit your customers, returning to sell goods in the store to your customers in the busy season; and, during the

period of this accounting, have you averaged more than 12 weeks' absence from the store in travelling on the road selling goods?

Objected to; overruled; exception.

A. I always left after the season and, — I said before, stayed from 6 to 7 weeks at a time. Yes, sir; I have averaged more than 12 weeks' absence from the store selling goods every year.

88 58. Mention one year that you were more than 12 weeks absent during the period of this accounting.

Objected to.

A. I can't exactly state the year, but it was between 1872 and 1880. It was in one of those years.

59. Do I understand you to say that it was but one of those years?

Obj. to, as the question has already been answered and the witness has not stated anything of the kind, and that comp't's counsel presumes to state testimony that has not been given & that the question is improper. Objection sustained.

89 60. How long were you absent during the year referred to in your answer to Q. 58?

Obj. to on the ground that the witness has already stated how long he was absent. Overruled. Exception.

A. Well, I may have made a 3 or 4 weeks' extra trip.

Q. 61. How long were you absent during that year, adding the 3 or 4 weeks extra?

A. It may have been between 15 & 18 weeks.

62. And is that the longest period of time that you have been absent in any one year during the period enquired of?

A. I think it is.

90 63. Where did you spend your time, and doing what, when you were not upon the road selling goods?

Objected to. Overruled. Exception.

A. I used to go around to the city offices here and try and sell goods.

64. Then for at least 34 weeks of the year during the years covered by the time heretofore mentioned you were in and out of the store every day, were you not?

A. If I was—well, I was.

65. And were you in the factory frequently or otherwise?

A. I was mostly on the sales-rooms floors.

Q. 66. Employed in selling goods?

A. When customers came in.

91 Q. 67. Question 65 repeated.

Objected to as answered. Overruled. Exception.

A. I probably went upstairs there once every 2 weeks—probably not that much.

68. What would be your business in the factory when you would go there?

A. Merely to take a book through or ask Mr. Borchardt a question.

69. About how many hands did you employ at that factory, meaning how many did you see at any one time during your visits already mentioned?

Obj. to as already fully gone into at the last session. Overruled. Exception.

92 A. I don't know the exact number, but I saw about 30 or 40 through the building.

Def't's counsel moves to strike out the words "30 or 40 through the building" in the last answer. Objection sustained.

Q. 70. How many floors did you occupy in the building referred to as a factory?

A. The third and fourth lofts.

Q. 71. Give the street and number of this factory.

A. Well, we were in 3 different stores at that time.

Q. 72. Give the street and number of each and the years you occupied each.

A. We were first in 75 Worth St. I think we were 3 years in Worth St. We started there in 1871 and remained there till
93 1874. From there we moved to 83 Leonard St. We were 3 years there, and from there to our present store, 74 Leonard St.

73. Did you have any other factory at any time elsewhere than in the lofts of the building occupied by you as a store?

A. We had none.

74. During your visits to the factory did you at any time see any binders or folding-guides which folded or would fold a strip of material upon both edges and on the centre simultaneously?

A. I did not.

75. Did you at any time during the period covered by this accounting see in your establishment any garments manu-
94 factured, offered for sale, sold, or kept on hand which were bound or trimmed by goods which were folded in the centre and upon one or both edges?

Obj. to. Overruled. Exception.

A. I recollect of seeing a bound drawer.

Adjourned to Friday, Dec. 13, 1881, at 11 a. m.

NEW YORK, *December 13th*, 1881—11 a. m.

Met pursuant to adjournment.

Present: The comp't in person and Mr. Bien, of counsel for def'ts.

Examination of Mr. WEILL continued.

Q. 76. What was the number, as charged in your book,
95 of the drawers referred to in your last answer?

A. I don't recollect.

Q. 77. Will you ascertain by referring to the books?

A. I could not, because the numbers are changed every season.

Q. 78. Why are the numbers changed every season?

Obj. to as immaterial. Obj. overruled.

A. I don't know. Mr. Bouchard, who has charge of getting up the stock, gave all the lot numbers and made all the changes.

Q. 79. I am not asking you concerning lot numbers at all. I refer to numbers designating styles. Do you mean to say
96 that if you had a style of garment designated by a certain number in the fall season that the same style of garment would be designated by a different or changed number in the spring, it being the same in every respect?

A. I don't recollect of our ever having any style number; every kind of garment was designated by a lot number.

Q. 80. If a merchant should purchase a lot of goods in the year 1872 under the designated number of 66 and should order the same goods under the same number in 1873, how would you know to what goods he referred?

A. He would always add 5, or whatever quantity of dozen he would order—an overshirt, drawer-, or an undershirt.

97 Q. 81. And if it should be in both instances an undershirt, could you select it from your stock by that number?

A. Our stock-keeper could; I could not.

Q. 82. Why could not you?

A. Because I was not acquainted with the stock.

Q. 83. If you should find that number in the stock you would know it as well as the stock-keeper, would you not?

Obj. to, 1st, that the question is a conclusion, etc. Obj. overruled and exception taken.

A. I would.

Q. 84. And would the same be true of any other year en-
98 suing besides the ones in question?

Obj. to as being too indefinite. Obj. overruled and exception taken.

A. I think I would be able to select them.

Q. 85. Has your firm at any time during the period of this accounting manufactured shirts trimmed with binding which was folded with the raw edge turned in?

A. I don't recollect of ever having seen any.

Q. 86. Do you mean to swear that you do not know that your firm has manufactured and sold such goods and in very large quantities?

Obj. to for the reason that the witness is already under oath.
99 Obj. overruled and exception taken.

A. I said I did not recollect of ever having seen any of the shirt-mentioned in the previous question.

Q. 87. Question repeated.

Same obj., and, further, that the witness has answered. Obj. overruled and exception taken.

A. I do not know of any having been manufactured and sold.

Q. 88. Describe exactly what kind of bound shirts the def'ts have manufactured and sold during the period of this accounting.

Obj. to, that compl't should confine himself to such goods as have been manufactured by the use of the patent. Obj. overruled
100 and exception taken.

A. I don't recollect of having seen any bound shirts whatever.

Q. 89. Has your firm manufactured shirts of calico or prints during the period enquired of?

A. They have.

Q. 90. Were any of them trimmed in any way; and, if so, how?

A. They were not.

Q. 91. As you professedly know but little about the details of the manufacture, sales, and stock, who is there, if any one, of your firm who has had more particular charge and knows more about that branch of the business?

A. Mr. Moses was more in the manufacturing department
101 than anybody of our firm. Mr. Blum, Mr. Moses, and myself of the firm know about the sales. Mr. Moses would be apt to know more about the stock than anybody else.

Q. 92. Please look in sales-book, Exh. No. 4, under date of Aug. 9th, 1879, in an entry to S. L. Boyd, the first item of which is: 673—10, 7.50, $75, and state what kind of goods 673 refers to.

A. I can't exactly tell, but I think it was an overshirt.

Q. 93. Is there any way of tracing and ascertaining that fact by referring to other books?

A. They could refer to the cutting ticket if they have them yet.

Q. 94. Is that the only way?

102 A. That is the only way I know of.

Q. 95. Does anybody else know of any other way to your knowledge?

A. I don't know.

Q. 96. Do you mean to be understood to say that there is no way that you know of of ascertaining what kind of goods these figures refer to except by reference to a cutting ticket, which may be destroyed?

A. That is the only way I know of, and I mean to be so understood.

Q. 97. And is that true of every other charge in these books from 1875 to 1879?

A. As far as I know, it is the only way.

Q. 98. Suppose Mr. S. L. Boyd should have failed to pay
103 his account, and it had become necessary to collect it by means of a suit and the cutting ticket had been destroyed, would it have been impossible to have furnished him with a bill of items and an exact description of the goods?

A. I think it would not have been impossible at the time.

Q. 99. At what time?

A. At the time the bill was due.

Q. 100. When was the bill due?

A. The bill was due December 9th, 1879.

Q. 101. How do you know that?

A. Because I know Mr. Boyd buys on 4 months' time.

Q. 102. How could you have given a descriptive bill 4 months' after?

104 A. Because it come into that season's business and we would be apt to recollect the lot numbers.

Q. 103. But if he had obtained 6 months' extension of time, carrying it beyond the next season, could you then have given him a descriptive bill?

A. It would not be necessary.

Q. 104. Question repeated.

A. I don't think we could unless we carried over some of the lot numbers.

Q. 105. Please look at the order-book, Exh. I, on page 264, where you will find some samples of goods, and state into what you manufactured such goods, if into anything.

A. They were manufactured into shirts.

Q. 106. For whom?

105 A. For us.

Q. 107. To whom were they sold.

A. To our general trade.

Q. 108. Under what numbers?

A. I don't recollect.

Q. 109. Any way of ascertaining?

A. If the cutting ticket is there we could ascertain, but if the cutting ticket is destroyed the stockman might recollect the numbers.

Q. 110. Please state the name of the stockman to whom you refer.

A. Mr. Schmidt.

Q. 111. Have you ever manufactured or sold any ties?

A. We have sold ties, but have not manufactured any.

Q. 112. Who manufactured the ties you have sold?

106 Obj. to as improper, nor has it been shown that these ties were folded by the use of the patent covered by the decree. Objection sustained.

Q. 113. Do you know how these ties were folded?

A. I do not.

Q. 114. Q. 112 repeated.

Same objection. Obj. overruled and exception taken.

A. E. Oppenheimer. He is in New York, but I don't know where he is.

Q. 115. Please look at your books and point out charges for ties.

A. The only year when we sold ties was the first year we did business—from 1871 to 1872.

Examination by def'ts' counsel:

107 Q. 116. Did your firm, during the period covered by this accounting, save or keep on hand any samples of goods manufactured by them?

A. They did not.

Q. 117. Did you personally have anything to do with the manufacturing department of your firm during the period covered by this accounting?

A. I did not.

Q. 118. Why would it not have been necessary if Boyd has asked for an extension of 6 months' time to give a bill of items of his account?

A. Because if he had taken an extension it would have been settled by note.

SOLOMON WEILL.

Sworn before me.

JOHN A. SHIELDS,
Master, &c.

108 Adjourned by consent to Tuesday, December 27th, 1881, at 11 a. m.

NEW YORK, *January 5th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: A. Comstock, Esqr., of counsel for comp't, and Franklin Bien, Esq., of counsel for defendant.

Continuation of examination of SOLOMON MOSES.

Q. 40. Have you produced a sworn statement and account of the number of folding-guides made or used or kept on hand by you or your agent or employees between the 10th day of December, 1872, and the 5th day of December, 1879, covered by the decree in
109 this case, as ordered by the master in an order dated the 15th day of October, 1881?

Defendant's counsel offers a sworn statement of the number of yards manufactured by the use of said guides, and will file on or before January 6, 1882, a sworn statement of the guides used and manufactured, as required by said question No. 40 and the order therein referred to.

The master marks the statement Exhibit No. 2, J. A. S., master, Jan. 5, 1882.

A. No.

110 Q. 41. Have you produced a sample of each and every kind of folding-guide covered by the decree in this case that was used or kept on hand by you or your firm and a statement as to by whom made, as required by an order made by the master Oct. 15th, 1881?

A. I have not.

Q. 42. In the return marked "Exhibit No. 2" you state that from December, 1876, to December, 1877, there were manufactured by the use of said guides 200 dozen garments. What kind of garments were these?

Objected to that the statement does not state anything of the kind.

A. I don't know; I can't describe the garments.

111 Q. 43. Were they shirts or drawers or undershirts or what?

A. They might have been shirts and drawers; probably both.

Q. 44. Were both shirts and drawers made by the use of these guides in that year?

A. I can't remember.

Q. 45. Have you any means of refreshing your recollection?

A. No, sir.

Q. 46. Can you state what kind of garments were made by the use of said folding-guides in the years 1878 and 1879, mentioned in your return?

A. I cannot.

Q. 47. Have you any means of ascertaining that?

A. No, sir.

112 Q. 48. Do you know how many folding-guides were used by your firm during the time covered by this decree?

A. From my own knowledge—no.

Q. 49. Have you any means of ascertaining?

A. I think the only means I would have of ascertaining would be through our foreman, Mr. Boschard.

Q. 50. Is there any member of your firm better aware of the facts heretofore enquired of than you?

A. No.

Q. 51. Have you any employees or any hands in your employ who are acquainted with the facts enquired of herein?

A. None but my former employee, Mr. Boschard.

113 Q. 52. Are your firm manufacturing now, or have they manufactured during the past season, or have they now on hand, any garments like any of those manufactured by you during the period covered by the decree by the use of the folding-guides referred to in your affidavit "Exhibit No. 2?"

Objected to as improper, and that they cannot go beyond the period covered by the injunction. Question No. 52 withdrawn.

Q. 53. Have you any garments on hand like any of those manufactured by the folding-guides covered by the decree herein & referred to in your affidavit and statement "Exhibit No. 2?"

114 A. I don't know as we have any just like them. We have garments on hands made by the folding-guide—what I think is the folding-guide.

Q. 54. You refer, do you, by "the folding-guide" mentioned in your answer, to the folding-guide referred to in your affidavit and statement "Exhibit No. 2?"

A. I refer to the machine that Mr. Boschard mentioned to me as the folding-guide or binder.

Q. 55. When were these garments made?

Question objected to unless it is confined to the period of accounting.

A. During the season—last fall.

115 Q. 56. What kind of garments were these?

Objected to. Overruling and exception.

A. Drawers, I think.
Q. 57. Don't you know?
A. Yes, sir; drawers.
Q. 58. No other kind?
A. Not that I remember.
Q. 59. Did your firm during the period covered by the decree manufacture any shirts by use of folding-guides or binders?
A. I don't remember.
Q. 60. Did not your firm manufacture largely shirts which were bound and trimmed?

Objected to unless the question is confined *by* the use of the guides. Objection sustained. Exception.

116 Q. 61. Did your firm manufacture shirts bound by the use of the folding-guides referred to during the years covered by the decree herein?
A. I think not.
Q. 62. Did not your firm manufacture largely shirts which were bound and trimmed?

Objected to unless the question is confined *by* the use of the guides. Overruled. Exception.

A. We bound a great many shirts by hand—simply bound; I can't say whether they were bound by hand or bound by machines; we manufactured shirts that were bound; I can't say whether it was largely or not.

117 Q. 63. Did you manufacture a great many shirts that were bound?
A. Not a very great many; I don't understand the question.
Q. 64. Question 62 and 63 repeated.

Objected to. Overruled. Exception.

A. No; not very largely.
Q. 65. Did you manufacture a great many?

Objected to. Overruled and exception.

A. No; not a great many.
Q. 65. Have you not in this examination stated that you bound a great many shirts?

Objected to as the examination speaks for itself and is
118 the best evidence. Overruled and exception.

A. Not a very great many.
Q. 67. Question repeated.
A. I have not—understanding the question as I did.

Q. 68. Make any explanation that the facts require.

Objected to as improper. Objection sustained.

Q. 69. What did you understand to be meant when you stated "we bound a great many shirts," in answer to question No. 62?

A. I meant by this woolen shirts given out to outside hands for simple binding; that's what I meant when I said binding.

Q. 70. Did your firm manufacture during the period en-
119 quired of by the use of folding-guides shirts made of muslin and prints, which were bound and trimmed?

A. I think not.

Q. 71. Don't you know?

A. I know only from the knowledge received from Mr. Boschardt.

Q. 72. Did he inform you that such was the fact?

A. He did not.

Q. 73. Did not your firm manufacture and sell largely shirts made of muslin or prints or linen, which were bound and trimmed?

Objected to unless the question is confined to the use of guides. Overruled and exception.

A. No, sir.

Adjourned to Friday, Jan. 6, 1882, at 11 o'clock a. m.

120 JAN'Y 6TH, 1882.

Present: Counsel for respective parties and the defendant.

Q. 74. Did not your firm manufacture and sell shirts made of muslin or prints which were bound during the period covered by this decree?

A. I think not.

Q. 75. Are you not positive?

A. I am almost certain; we did sell & make some undershirts made of nainsook muslin.

Q. 76. Did not your firm make or sell gentlemen's shirts with collar, bosom, and cuffs of prints, the collar and bosom of which were bound with goods of the same or different patterns, during the period covered by this decree?

121 A. We did not.

Q. 77. Do you mean to state positively that your firm neither made nor sold shirts like those inquired of in question 76?

A. I mean to state positively that we did not make in those years.

Q. 78. How about having sold?

A. We may have sold—I can't remember—shirts of that description.

Q. 79. Were you not fully posted concerning everything that was made and sold in your establishment during those years?

A. I was fairly posted for each season.

Q. 80. And does your memory fail you as to whether said shirts were made or sold at that time?

122 Question objected to as to the word "made." Objected to and overruled. Exception.

A. I can't remember.

Q. 81. Where was your factory located during the period enquired of?

A. In the stores we occupied, at No-. 76 and 84 Leonard St.; I can't say positively; about the middle of the block in Worth St.; North Leonard, near Broadway; the south side of Leonard, near Church; the north side of Worth St., about the middle of the block.

Q. 82. Where was your factory from the first of December, '76, to the 5th of Oct., '79?

A. I think in the Leonard St. stores; No. 74 Leonard St.

123 Q. 83. What floors were occupied by the factory?

A. A portion of the second loft and the whole of the top loft—fourth loft.

Q. 84. Upon what floor were the guides in question used?

A. The only floor that we had machines on was the second floor.

Q. 85. Have you produced samples of folding-guides such as you used in your business during the period covered by this decree?

A. I produced such guides as Mr. Borchard gave me & similar to such as we used.

Q. 86. Have you made an affidavit relating to these marked "Exh. A?"

124 A. Yes, sir; and the guides so produced are marked by the master No-. 3 & 4.

Q. 87. Do you know, as a fact, whether guides like those were used in your business?

A. I only know from the information given to me by Mr. Borchard.

Q. 88. And is Mr. Borchard the only person who was connected with your business, who can give any information as to the use of folding-guides like those covered by the decree?

A. He is.

Q. 89. Do you refer to the Albert Borchardt who made the return and affidavit in this case, marked "Exh. No. 1, Nov. 18th, 1881?"

125 Objected to on the ground that there *are* more than one return here, and the question leads one to believe that there is more than one. Overruled. Exception.

A. I do.

The master adjourns the reference from 12.30 to 1 p. m., at the request of def't.

NEW YORK, *January 6th*, 1882—1 p. m. o'clock.

Met pursuant to adjournment.

Counsel present as before.

Continuation of Mr. SOLOMON MOSES' examination.

Q. Did you have any machinist in your employ or have any work done by any machinist between the 1st of Jan'y, '76, and the 1st of Oct., '79, beside Mr. Borchardt?

126 A. I don't know of any; if there was anything the matter with the machines Mr. Borchardt attended to them.

Q. 91. Who superintended the work in the factory during those years?

A. Mr. Borchardt was our superintendant.

Q. 92. Did you have any other foreman or forewoman beside him?

A. Mr. Borchardt was foreman; we had no other foreman; Mr. Borchardt had assistants.

Q. 93. Who were his assistants; give their names?

A. The only name that I can remember was Mr. Nathan; he is at present in our employ.

Q. 94. Did you have any forewomen or a forewoman?

A. We had no forewoman in that store.

127 Q. 95. Did you in the factory?

A. No; the factory was in the store.

Q. 96. Are you positive about this?

A. I think I am.

Q. 97. Question repeated.

A. I think I am.

Q. 98. Please answer yes or no.

Objected to.

A. I think I am positive we had one.

Q. 99. Question repeated.

A. I can't answer positively.

Q. 100. Is there any way that you can refresh your memory concerning that?

A. Yes; I can find out through Mr. Burchardt.

Q. 101. Is that the only way?

A. That is the only way.

128 Q. 102. Have you a book containing the number of hands in your employ during that time?

A. I think not.

Q. 103. Can't you state that positively?

A. I cannot.

Q. 104. Who knows best about that?

A. No one, except Mr. Borchardt, from his memory.

Q. 105. Does Mr. Borchardt know what you now have?

Objected to.

Q. 106. Who has charge of the books that were kept from '72 until '79?

A. Mr. Blum.

Q. 107. How long has Mr. Blum had charge of the books of the concern?

A. He had charge during those years.

129 Q. 108. Was he the book-keeper or did you have a book-keeper under his control and management?

A. Yes; we had.

Q. 109. What was the book-keeper's name?

A. Mr. Leusner, our present book-keeper, was book-keeper during some of those years. He has been with us five or six years.

Q. 110. Is he also cashier? If not, who is?

A. Mr. Blum was cashier during that time.
Q. 111. What were Mr. Weill's duties?
A. Selling and travelling.
Q. 112. Were you present when Mr. Borchardt made up the account in Exh. No. 1?
A. No.
130 Q. 113. Do you know from what books he obtained the items therein mentioned?
A. No, sir.
Q. 114. Who of your firm does know that?
A. No one that I know of.
Q. 115. How happened it that he made up that account?
A. I don't know.
Q. 116. Was it at your request?
A. No.
Q. 117. At whose request was it?
A. I don't know. I was out of the country.
Q. 118. When did you leave the country?
A. November 2nd, 1881.
Q. 119. You say you have bound drawers now in stock like those bound by the folding-guide covered by the decree made by
131 your firm between '76 and '79; will you produce a sample here before the master?

Defendants' counsel says that he will produce it if so ordered by the master.

Question objected to.
Adjourned till Tuesday, Jan. 10th, 1882, at 11 o'clock a. m.

NEW YORK, *January 10th*, 1882—10 o'clock a. m.

Met pursuant to adjournment.
Present: Counsel for respective parties.
Adjourned to Wednesday, Jan'y 18th, 1882, at 11 a. m.

132 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *against* SOLOMON MOSES *et al.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Solomon Moses, being duly sworn, says that he is informed by A. Borchardt, who had charge of defendants' manufacturing department, that during the period covered by this accounting the defendants for about 3 years, from about 1876 to 1879, used one of the guides claimed by said Wooster, and a second guide was used occasionally, and deponent produces what he is informed by said Borchardt are samples of such guides used as aforesaid and are marked Exhibits No-. 3 and 4.

SOLOMON MOSES.

Subscribed & sworn to before me January 5, '82.
FRANKLIN BIEN,
Notary Public, N. Y. Co.

133 Endorsed; U. S. circuit court. George H. Wooster against Solomon Moses *et al.* Statement as to guides, &c. Joseph Koch, defendants' att'y, 320 Broadway, N. Y. city. Ex. "A," Jan'y 6, '82. J. A. S., Ex'r.

134 U. S. Circuit Court.

GEORGE H. WOOSTER *against* SOLOMON MOSES *et als.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Solomon Weill, being duly sworn, says he is one of the defendants herein; that he is unable to furnish any samples of the garments manufactured by use of the guides between the dates called for in pursuance of the order herein for the reason that the defendants sold all their garments aforesaid and kept no samples, nor can deponent procure any of the same, as most, if not all, of said garments — sold and delivered in the Southern and Western States. As to samples of the guides, deponent cannot find any nor does he know where he can, and is therefore unable to produce same. No contempt of the orders herein was intended by deponent at any time.

135 SOLOMON WIELL.

Sworn to before me Nov. 23, '81.

FRANKLIN BIEN,
Notary Public, N. Y. Co.

Endorsed: U. S. circuit court. George H. Wooster *vs.* Solomon Moses *et al.* Affidavit. Joseph Koch, defendants' att'y, 320 Broadway, N. Y. city.

136 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *against* SOLOMON MOSES *et al.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Solomon Moses, being duly sworn, says he is one of the defendants; that the only statement he can furnish is from the statement filed by Albert Borschardt, who had sole charge of this business for deponent's firm, and which statement is marked Ex. No. 1, Nov. 18th, 1881, J. A. S., Ex'r, and is as follows:

1. From December, 1876, to December, 1877, there were manufactured by the use of said guides about 200 dozen garments, containing about 2,500 yards.

2. That from December, 1877, to December, 1878, about 300 dozen garments were manufactured by use of said guides, containing about 3,600 yards.

137 3. That from December, 1878, to October 10th, 1879, there were manufactured by the use of said guides about 200 dozen garments, containing 2,400 yards.

That this is the only statements defendants can furnish, as required by the order.

SOL. MOSES.

Subscribed and sworn to before me January 5th, 1882.

FRANKLIN BIEN,
Notary Public, N. Y. Co.

Endorsed: Ex'r —, Nov. —, J. A. S., master. U. S. circuit court. George H. Wooster against Solomon Moses *et al.* Statement. Joseph Koch, def'ts' att'y, 320 B'way, N. Y. Rec'd Jan'y 5th, 1882.

138 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER
vs.
SOLOMON MOSES, GOTCHO BLUM & SOLOMON WEILL.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert Borschardt, being duly sworn, says that between Dec. 1st, 1876, and Oct. 1st, 1881, he had sole charge of [the] manufacturing department of the above defendants; that the defendants, Moses, Blum and Weill, did not use the guides claimed by complainant Wooster until December, 1876, when they used one of said guides from that time until the expiration of the patent, and part of the year 1877 they used two of said guides; that said guides were not continually used by said Moses, Blum and Weill, but only at times when the
139 goods hereinafter mentioned were manufactured; that deponent has made an examination of the books of the firm of Moses, Blum and Weill between the dates demanded by the complainant, and the only statement that can be furnished therefrom, to the best of his knowledge and belief, is as follows:

1. That from December, 1876, to December, 1877, there were manufactured by the use of said guides about 200 dozen garments, containing about 2,500 yards.

2. That from December, 1877, until December, 1878, about 300 dozen garments were manufactured by the use of said guides, containing about 3,600 yards.

3. From December, 1878, to October 10th, 1879, there were manufactured by the use of said guides about 200 dozen garments, containing about twenty-four hundred yards.

And this deponent further says that he is unable to give
140 the amount of each lot number for the reason following—that in the defendants' business there are two seasons in each year and the lot numbers are changed each season, and this deponent cannot now recollect what the lot number of the garments manufactured by the use of said guides were, or how many of such lot number were made, nor can he derive such information from the examination of said books.

ALBERT BORCHARDT.

Subscribed and sworn to before me Nov. 18, '81.

FRANKLIN BIEN,
Notary Public, N. Y. Co.

Endorsed: U. S. circuit court. George H. Wooster against Solomon Moses *et al.* Affidavit & statement. Joseph Koch def'ts' att'y, 320 B'way, N. Y. city. Exh. No. 1. Nov. 18th, 1881. J. A. S., Ex'r.

141 NEW YORK, *January* 18, 1882—10 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Adjourned to Wednesday, Jan'y 25, 1882, at 2 p. m.

NEW YORK, *January 25th*, 1882—2 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Adjourned to Thursday, January 26th, 1882, at 10.30 a. m.

NEW YORK, *January 26th*, 1882—10.30 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Adjourned to Thursday, February 2d, 1882, at 11 a. m.

142 NEW YORK, *February 2d*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

The examination of Mr. SOLOMON MOSES continued.

Q. 120. Have you produced a sample of drawers like those bound by the folding-guide covered by the decree made by your firm between 1876 and 1879, as ordered by the master at the last session?

A. I produce a sample selected by Mr. Borchard, which he thinks is similar to those made by the guide.

Q. 121. What do you think about it?

A. I don't know whether it is or not.

143 Q. 122. You stated on your last examination that your firm had on hand drawers similar to those covered by the decree herein. Is the sample you have produced the drawers referred to in that answer?

A. It is the sample that Mr. Borchard told me was like the drawers made by the guide. It is the sample I referred to in answer to Q. 53 to 58.

Q. 123. I see the sample is marked or stamped 839; to what does that refer?

Objected to, unless it refers to something prior to 1879.

A. It refers to the lot number under which the drawers are sold.

Q. 124. Is this the regular number under which drawers
144 of this kind have heretofore been sold?

Objected to, unless the question is made more definite and applies to something that took place before 1880. Overruled. Exception.

A. No; we change our numbers every year.

Q. 125. How long has this drawer been sold under lot number 839?

A. One season.

Q. 126. What lot number was it sold under before Oct., 1879?

A. I don't know; this drawer was never made before that time.

Q. 127. Were not drawers like this made before that time?

A. I think similar drawers to that were made.

145 Q. 128. Question repeated.

Objected to as already been answered. Further objected to—any part of the drawer except that produced by the guide.

A. I can't remember.

Q. 129. Have you not so sworn repeatedly?

Objected to, and witness is directed not to answer the question unless ordered by the master. Overruled. Exception.

A. I don't remember now.

The sample of drawers produced *are* put in evidence & marked Exh. Drawers, J. A. S., master.

Q. 130. During the period covered by this decree were there any other drawers save those exactly like Exh. Drawers

146 made or sold by your firm which were made by guides covered by this decree?

A. I don't know; I could only get that information from Mr. Borchard.

Q. 131. Do you know nothing concerning your own business, as carried on and managed by you as senior member of the firm of Moses, Blum & Weill, relating to goods made or sold by said firm, except from information obtained from your foreman in your factory?

Objected to, unless it is confined to the time covered by the decree and also to the goods made by the guide. Overruled. Exception.

147 A. I know nothing that pertains to the actual manner in which the garments were manufactured, except through his information.

Q. 132. I am not asking you now concerning the manner in which the goods are made, but as to styles of goods sold in your store which would only cause an exercise of your eyesight to obtain the knowledge enquired of. Now, what I wish to know is whether your firm sold any other kind of drawers which were bound like the Exh. Drawers produced during the period enquired of herein.

Objected to the interjection "which would only cause an exercise of your eyesight to obtain." Overruled. Exception.

148 A. I remember that we sold drawers, but I don't recollect the styles. We sold bound drawers and unbound, besides the exh.

Q. 133. Have you on hand now any bound drawers like those sold during the period enquired of other than like the Exh. Drawers?

A. I don't know whether we have or not. I have not been attending regularly to business since last April.

Q. 134. Who is there of your firm or connected with your concern now who can give me the information above enquired of?

A. No one that I know of.

Q. 135. Who made the folding-guides, Exh. No-. 3 & 4, produced by you?

A. I don't know.

149 Q. 136. By whose permision or consent, if any one's, did you use such guides?

Objected to as perfectly immaterial. Overruled. Exception.

A. Mr. Borchard had full permission to do whatever he thought necessary in the manufacturing department by machinery, &c.

Q. 137. Did Mr. John A. Piper makes these guides, Exh. 3 & 4, for you?

A. I don't know of my own knowledge.

Q. 138. Have you been told he did?

A. I don't remember that I have.

Q. 139. Have you been told that he gave you his consent or permission to use them, or do you know it of your own knowledge?

150 Obj. to as immaterial. Overruled. Exception.

A. I don't remember.

Q. 140. Please answer yes or no.

Obj. to because it is impossible witness can answer yes or no. Overruled. Exception.

A. I can't answer it yes or no. There was some conversation, but I don't remember it, for the simple reason that I did not pay any attention to it.

Q. 141. What was the conversation, when, and with whom?

A. This conversation was — Mr. Borchard after we were served with the papers. I don't remember the conversation.

151 Q. 142. Did you swear to answer in this case on or about the 30th April, 1881, before Byron A. Cohen, a notary public?

Obj. to, as the answer speaks for itself. Overruled. Exception.

A. I swore to one or 2 papers; I don't remember what they were nor what dates they were.

Q. 143. Have you ever sworn to any statement that you had permission to use folding-guides in your business from a man named Piper?

Objected to, as comp't is reading from a copy answer and the original answer must be produced. Overruled. Exception.

A. I don't remember.

152 Q. 144. Did you ever have such information given you by any one?

Objected to for the reason it has been already gone into and fully answered. Overruled. Exception.

A. I can't remember now.

Q. 145. Please look at the paper now shown you and, after carefully reading it, state whether you ever swore to the statement therein made, or to a copy of it.

Obj. to on the ground that it is an alleged copy of an answer, or that he ever signed an answer. Sustained. Exception.

Q. 146. Please look at the paper now shown you and state whether your signature is attached thereto.

153 A. I can't recognize that as my signature.

147. Can you state it is not your signature?

A. No.

148. Don't you know your own signature?

A. I do sometimes.

149. Can't you state whether Solomon Moses, written in the paper shown you, is in your handwriting?

A. I can't.

150. Will you please write on the record your signature for the master—"Solomon Moses."

The paper referred to, which is the answer in this case, is marked for identification Exh. Moses' Answer, J. A. S., master, Feb'y 2, 1882.

154 151. Cannot you now state, after comparing your signature with the one attached to the answer, that the one in the answer is not yours?

A. I can't tell; I was at home sick from an accident to my head at the time this paper was signed. The accident occurred in March or April, 1881.

152. Did you swear to the answer in this case at home or at the office of a notary?

A. At home.

SOLOMON MOSES.

Sworn before me—

JOHN A. SHIELDS,
Master, &c.

Adjourned to Thursday, Feb'y 9, 1882, at 11 a. m.

155 NEW YORK, *February 9th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Adjourned to Thursday, February 16th, 1882, at 11 o'clock a. m.

156 NEW YORK, *February 16th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: George H. Wooster, Esq., the complainant in person, and Franklin Bien, Esq., of counsel for def't.

CHARLES GIMBER, a witness produced on the part of the compl't, being duly sworn, deposes and says:

Q. 1. Please state your name, age, residence, and occupation.

A. Charles Gimber; I am 30 years of age; I reside [at] New Brighton, Staten Island, and I am a machinist.

Q. 2. Are you connected with anybody in the machinist business? And, if so, state with who.

A. I am; the firm is E. Brosemann & Co., doing business at 90 White street.

Q. 3. Do you know the def'ts, Moses, Blum & Weil; and, if so, how long have you known them?

A. I do; since 1876.

Q. 4. Have you ever done any machinist work for them; and, if so, when and what?

A. I have; in the year 1877, to my knowledge, making binders and folders in combination with rollers.

Q. 5. Can you state, from any memorandum which is a copy from your books, how many you made of said folding-guides and when?

Objected to as incompetent. Sustained.

Q. 6. How many folding-guides and binders did you make for said firm in the year 1877?

157 Objected to as improper, as the compl't is confined to the guides covered by the decree. Overruled. Exception.

A. I made, to the best of my knowledge, four binders in the year 1877 and four folders in in the year 1878.

Q. 7. What kind of binders and folding-guides were these so made by you. Describe them, as near as you can.

A. The binders are the so-called three-line binders, and the folders are double folders.

Q. 8. Please look at Def'ts' Exh's 3 & 4, J. A. S., master, and state whether they are like or unlike the binders made by you for the def'ts.

A. They are precisely the same we have made.

Q. 9. Do you mean that you made those two exh's?

A. They have been made in our place.

Q. 10. Please look at the double-edge folding-guide now shown you and state whether it is like or unlike the double folders made by your firm for the def'ts.

A. It is the same.

(The folding-guide is offered in evidence and marked Compl'ts' Exh's Double-edged Folder, J. A. S., master.)

Q. 11. In connection with what are Exh's 3 & 4 intended to be used, if anything?

A. In connection with a sewing-machine.

Q. 12. And in connection with what is the Exh. Double-edged Folder used?

158 A. In connection with a pair of rollers heated by gas.

Q. 13. Are you familiar with the folding capacity of the binders, Exh's 3 & 4, in connection with a sewing-machine, and also the folding capacity of Exh. Double-edged Folder, in connection with rollers?

A. I am.

Q. 14. Please state what the difference is, if any, in said folding capacity?

A. The difference is nine thousand yards in straight material in favor of the double folder, in ten hours.

Q. 15. How many binders is a double folder equal to?

A. Ten, providing one is used on a sewing-machine and the other on a roller.

Cross-examined by F. BIEN, Esq.:

Q. 16. How long have you known Mr. Wooster?

A. About six months to speak to.

Q. 17. How did you become acquainted with him?

A. By subpœna in other cases.

Q. 18. In how many cases have you testified for Mr. Wooster?

A. All that I have been subpœnaed for; I can only recollect one.

Q. 19. Were you subpœnaed in this case?

A. If I wasn't I wouldn't be likely to come here, because my time is valuable.

Q. 20. Question repeated.

A. Yes; I was.

Q. 21. Did you have any conversation with any one relative to your testimony in this case, before testifying here?

A. Not as regards to what I have stated.

Q. 22. Question repeated.

159 A. I have.

Q. 23. With who?

A. Mr. Wooster.

Q. 24. What was the conversation, and where did it occur, and when?

A. The conversation was whether I had my memorandum with me of the dates these exh's or binders were made and delivered, at about 11 o'clock this day, in the hall of this building; that is all.

Q. And that is the only conversation you had at any time with any person in reference to this case?

A. No, sir; I had a conversation with the operator who worked on the binders to take my place as witness in this case.

Q. 26. Who was the operator and his name?

A. Her name was not to be found out; she wouldn't tell me her name.

Q. 27. Do you know her residence?

A. No, sir.

Q. 28. Where did you see her?

A. At Seth Corwin's, in Canal street.

Q. 29. At whose request did you see her?

A. At my own.

Q. 30. Who gave you the orders, in the year 1877, for the folders and guides for the def't?

A. The superintendent, Mr. Burchard, for some of them, the rest being ordered by this particular operator, in the name of the firm.

Q. 31. How many were ordered by Mr. Burchard, and how many were ordered by the operator, during that year?

A. To the best of my knowledge, Mr. Burchard has ordered six altogether, and two by the operator.

160 Q. 32. Was that during the year 1877?

A. I should have to refer to the books to find that out.

Q. 33. Would you have to refer to your books as to how many folding-guides or binders were made by your firm for the def'ts?

A. I think I have answered the question before.

Q. 34. Question repeated.

Objected to as already answered. Overruled. Exception.

A. No, sir.

Q. 35. From what do you derive your knowledge as to how many were made altogether for the def'ts?

A. My knowledge has been derived from the books, keeping the books myself, and making out all bills therefrom.

Q. 36. Did you keep the books of the account of the def'ts of the number of guides and binders made for them?

A. No, sir.

Q. 37. Who did?

A. A boy.

Q. 38. From what did he make the entries?

A. From the orders of one of the firm.

Q. 39. Were those orders in writing?

A. They were in the shape of a small slip of paper attached to the attachment.

Q. 40. What has become of those slips of paper?

A. I don't know; been destroyed, probably, after entering.

Q. 41. Who made out the written slips for this firm?

A. I made out the most of them, to my knowledge.

Q. 42. How many of them did you make out?

161 A. Five, to my knowledge.

Q. 43. How did you receive orders from the def'ts; were they in writing or otherwise?

A. Some in writing and some verbal.

Q. 44. How were the first orders given; in writing or verbal?

A. Verbal, to the best of my knowledge.

Q. 45. Will you swear that the first order given you was not in writing?

A. I will not.

Q. 46. Who gave you the verbal orders?

A. It came from both parties aforesaid.

Q. 47. How many verbal orders were given you by the operator?

A. I can't exactly say; don't remember.

Q. 48. To the best of your recollection, how many?

A. All that was ordered by the operator, the operator stating that she was sent by Mr. Burchard.

Q. 49. Question repeated.

A. I don't know.

Q. 50. Were there as many as four ordered by the operator?

A. I don't remember.

Q. 51. Will you swear there weren't as many as four ordered by the operator?

A. I will not.

Q. 52. Who gave you the first order for these machines; Burchard or the operator?

A. I don't recollect.

Q. 53. How do you recollect that there were eight ordered?

A. By the books.

Q. 54. Who delivered these machines made by you to the def't-?

A. Some were sent to them and some were delivered by my partner.

162 Q. 55. How many were sent to them?

A. All my partner didn't deliver.

Q. 56. Question repeated.

A. I don't remember.

Q. 57. Who called for them?

A. I don't remember.

Q. 58. Did you know the person the time he called for them?

A. By sight—not personally.

Q. 59. Do you know how many of these machines the def'ts used?

A. I only know that what they have got was made to work perfect.

Q. 60. Question repeated.

A. I don't recollect how many were used.

Q. 61. Did you ever see the def't use any of them?

A. No, sir.

Q. 62. Then you didn't know how many the def'ts used?

A. I know that two were returned wore out, whether they were used or not.

Q. 63. Do you know who used those two?

A. No, I do not.

Q. 64. From where do you derive your knowledge as to the capacity of the folding-guides and binders?

A. From seeing the likes of them work and trying them myself.

Q. 65. Did you ever take any actual measurement of the number of yards made by each machine?

A. I have.

Q. 66. How many yards did you ever measure at any one time made by either of the machines?

163 Objected to as indefinite. Overruled. Exception.

A. I don't understand the question.

Q. 67. Did you ever measure the number of yards made by the folding-guide, Exh. 3 & 4?

A. I did.

Q. 68. When and where?

A. The first one I made at our place.

Q. 69. How many yards did you measure there by the use of the guide?

Objected to as indefinite. Sustained.

Q. 70. How many folded yards did you measure which were made by the use of said guides, as stated in answer 68?

Objected to unless a given time is stated in the question. Overruled. Exception.

A. One hundred and fifty in an hour by foot-power on a machine not having a very long stitch.

Q. 71. Did you ever measure the number of yards made by the use of the folder in combination with the rollers?

A. I did.

Q. 72. When and where?

A. In the same place—the first of the kind I made.

Q. 73. How many yards did you measure that were made by the use of the folder in an hour?

A. Nearer to three thousand than to two thousand yards, depending on the size of the roller—as to the swiftness of the roller.

164 Q. 74. What kind of rollers were used by the def'ts in connection with the folder *e*, Compl't's Exh. Double-Edged Folder?

A. Those were small rollers.

Q. 75. What was the capacity of those rollers for an hour—how many yards?

A. About fifteen hundred yards to two thousand yards, if there is only one guide used on the roller. There can be more than one guide used on the roller at one time, if necessary.

Q. 76. Did you ever see the def'ts use the rollers and guide?

A. No, sir.

Q. 77. Do you know how many they used, of your own knowledge?

A. I haven't seen them use any.

Redirect by G. W. WOOSTER, Esq.:

Q. 78. Did Moses, Blum & Weil, the def'ts, pay your firm for the binders, folding-guides, and rollers about which you have testified this morning?

A. They did.

Recross by —— ——.

Q. 79. Was it paid at one time or on different occasions?

A. On different occasions.

Q. 80. By whom was it paid, and how?

A. To the best of my knowledge, by the firm.

Q. 81. Which one of them?

A. I couldn't say which one of them; I didn't go for it myself—for these particular bills.

Q. 82. Were any of these bills paid at your store?

A. I don't remember.

Q. 83. Did the operator heretofore referred to by you ever

165 pay your firm for any of these devices—these exh's?

A. I don't remember.

Q. 84. Will you swear she did not?

A. No, sir.

Redirect:

Q. 85. Would you have been likely to have known it if she had?

A. No, sir. As the charges were made to Moses, Blum & Weil, if

she paid them individually. They were charged—they were entered for the firm at her request, as the books show.

Q. 86. And were they so paid for by the firm?

Objected to as having been already gone into on the direct and cross —. Overruled. Exception.

A. Those that she ordered were paid for by the firm.

Q. 87. Do you mean to swear positively that the firm of Moses, Blum & Weil paid for the devices ordered by the operator during the years 1877 and 1878 as having been ordered by her, as you testified, for the use of def'ts?

Objected to as indefinite and as a repetition of the question, making it unintelligible. Overruled. Exception.

A. I don't understand the question.

Q. 88. You testified that some of the devices were ordered by the operator for the def'ts during the year- 1877 & 1878, have you not?

A. Yes, sir.

166 Q. 89. Do you mean to swear positively that the firm of Moses, Blum & Weil paid for those devices ordered by the operator?

A. I don't recollect.

Re-redirect by G. H. WOOSTER, Esq.:

Q. 90. Were the devices charged to Moses, Blum & Weil and the account settled by them?

A. Those particular eight were paid for by the firm.

Q. 91. You have stated in your cross-examination that you have seen and had a conversation with this operator at one Seth Corwin's in Canal street; did she say anything as to whether these guides testified to by you, or any of them, were used by her and others in the factory of the def'ts?

Objected to.

Re-recross:

Q. 92. Did you receive any of this money for these bills for these devices from anybody?

A. I don't recollect.

Q. 93. Do you know who paid for these eight devices you testified to, of your own knowledge?

A. I only know from the books; personally I do not.

Def'ts' counsel gives notice of a motion to strike out this witness' testimony, to be argued at the next meeting.

Adjourned by consent to Wednesday, February 24th, 1882.

NEW YORK, *Feb'y 24th*, 1882.

Adjourned to March 1, 1882, at 1.30 p. m.

167 WOOSTER *vs.* MOSES.

NEW YORK, *February* 24, 1882—1 o'clock p. m.

Met pursuant to adjournment.

Present: A. Comstock, Esq., of counsel for compl't; also George H. Wooster, Esq., the complainant in person, and no appearance on the part of the deft-.

The master adjourns the further taking of testimony in this case until Wednesday, March 1st, 1882, at 11 a. m.

NEW YORK, *March 1st*, 1882—1.30 p. m.

Met pursuant to adjournment.

Adjourned to March 7th, 1882, at 11 a. m.

NEW YORK, *March 7th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: A. Comstock, Esq., for the complainant, and George H. Wooster, Esq., the complainant, and Franklin Bien, Esq., for defendants.

JOHN A. PIPO, a witness produced on the part of the compl't, being duly sworn, deposes and says:

Q. 1. Please state your name, age, residence, and occupation.

A. John A. Pipo; I am 50 years of age; I reside in Hoboken, New Jersey; I am a machinist.

Q. 2. Do you know the def'ts, Moses, Blum, and Weil; and, if so, how long have you known them and how did you become
168 acquainted with them?

A. I knew Mr. Moses when he was of the firm of Wolf and Moses, and Moses, Blum and Weil since they started the firm. I manufactured before for them, and by that I got acquainted with them.

Q. 3. Have you done any machinist work for the def'ts; and, if so, what kind of work have you done for them between the 1st of Jan'y, 1873, and the 5th of Oct., 1879?

A. Yes, sir; I made several binders, corders, &c.

Q. 4. Please look at Exh. No. 3 and state if you ever made any binders like or substantially like said exh. for the def'ts between the before-mentioned dates.

A. Yes, sir.

Q. 5. Did you keep any books recording the number of binders so made and the time when they were made for the def'ts?

A. Yes, sir.

Q. 6. Did you keep said books yourself?

A. Yes, sir.

Q. 7. Have you with you a copy of the charges in said book of binders made for the def'ts?

A. I have got a memorandum drawn out of the book.

Q. 8. Who made the memorandum?

A. I done it myself.

Q. 9. Please refer to said memorandum and state when and how

many binders you made for the def'ts like Exh. 3 referred to, and between the dates before mentioned.

A. I made in November, 1876, four binders, one $\frac{3}{4}$ inch wide, one $\frac{7}{8}$ inch wide, & two 1 inch wide. I made in July, 1877, three binders, one $\frac{5}{8}$ inch wide, one $\frac{3}{4}$ inch wide, and one 1 inch wide. I made in September, 1878, one binder 1 inch wide, and I
169 made in March, 1879, three binders. I did not put the width down to them. I cannot tell you the width; that makes eleven altogether.

Q. 10. Were these eleven binders like or unlike Exh. 3?

A. The principle was exactly the same and the same make, and for the same work. The shape was a little different. Each machinist makes his own work, but the principle was the same.

Q. 11. Please state how a strip of muslin or other fabric cut the width of said binders and passing through them would come out folded.

Objected to as immaterial. Overruled. Exception.

A. The brass tube of the binder is bent that way, and if the unfolded strip is pushed in on one end it folds itself at both edges and in the middle in such a way that there is a passageway left in the middle for to allow the goods to pass through that have to be bound and have the folds on each side of the goods that are to be bound.

Q. 12. Where did you deliver these binders after you had made them for the def'ts?

A. I offered them in the office of Moses, Blum and Weil, but I was sent upstairs to Mr. Burchardt and delivered them to him or left them in a room where they were used. Mostly I had to try them and put them on a machine myself in working order.

Q. 13. Do you mean you had mostly to set them at work at Moses, Blum and Weil's factory?

170 Objected to. Overruled. Exception.

A. Yes, sir.

Q. Who paid for these binders?

A. The book-keeper of Moses, Blum and Weil, as much as I remember. I believe that Mr. Moses paid me once, but I am not certain.

Cross-examined by F. Bien, Esq.:

Q. 15. How long have you known Mr. Wooster?

A. As near as I can remember since 1858 or '59.

Q. 16. When did you first hear of these patented binders?

A. I heard in the year 1857 or '58; but it belonged at that time to Alexander Douglass.

Q. 17. When did you first commence to make any of these binders?

A. I first made them in 1858.

Q. 18. Did you ever make any for Mr. Wooster?

A. I made one by the order of Alexander Douglass for Mr. Wooster in 1859.

Q. 19. Mr. Pipo, were you subœnaed as a witness on this case?

A. Yes, sir.

Q. 20. When did you first see Mr. Wooster in reference to the case of Moses, Blum & Weil?

A. The day I was subpœnaed, or the day before; I don't recollect exactly; the same day the subpœna was handed me, about 10 or 11 days ago; I don't recollect exactly.

Q. 21. And that was the first time that you ever spoke to Mr. Wooster in reference to this case?

A. Yes, sir.

Q. 22. Did you ever speak to anybody before that who was sent to you by Mr. Wooster?

171 A. Not before the serving of the subpœna; no, sir.

Q. 23. Where was you served with that subpœna and by whom?

A. Mr. Comstock served it on me in my shop at home in Adams street, Hoboken, New Jersey.

Q. 24. When and where did you see Mr. Wooster in reference to this case?

A. I see him the day of the subpœna, just before the time we ought to be here, at his office, 240 Broadway.

Q. 25. How did you come to go to Mr. Wooster's office?

A. I was not acquainted with this building, and on account of that Mr. Comstock told me he would go with me and show me the place.

Q. 26. Then you discussed about the building when you were subpœnaed, did you not?

A. I was in the building 2 or 3 times and had difficulty in finding the rooms, and this subpœna read room 78 post office building.

Q. 27. Have you ever been in this room before?

A. I am not sure of it; it seems to me I have been here before.

Q. 28. How many times have you been here?

A. That is a thing I have never paid any attention to. I thought it was not worth while.

Q. 29. How many times have you acted as a witness for Mr. Wooster in cases relating to the guide and binder?

A. In none before. This is the first.

Q. 30. When you went to Mr. Wooster's office did he tell you what you was expected to testify to? Answer yes or no.

A. All that Mr. Wooster asked me if I made any binders

172 for these folks, if I recollected anything in this case; to tell the truth and nothing else.

Q. 31. Were you ever sued by Mr. Wooster in reference to these binders?

A. No, sir. I had a license to use fifty.

Q. 32. From whom did you receive the license to use fifty?

A. From Mr. Wooster, in the year 1875, for as long as the patent was running.

Q. 33. Have you got the license with you?

A. Yes.

Q. 34. Will you produce it?

A. If I must do so.

Q. 35. Def'ts' counsel calls for *its* production of the license.

A. I produce it.

Def'ts' counsel offers the license in evidence.

The witness objects to leaving it in answer to Mr. Wooster, but is willing that a copy shall be made.

Q. 36. When did you first see Moses, Blum, & Weil in reference to their binders?

A. In 1876.

Q. 37. At their office.

[A.] ——

Q. 38. What took place?

A. I don't recollect the words; they ordered four binders.

Q. 39. Do you know Mr. Albert Burschardt?

A. Yes, sir.

Q. 40. Did you know him when he was working with Rothschild Brothers & Gutman?

A. Yes, sir.

Q. 41. Did you tell him you had the privilege of using a 100
173 binders from Mr. Wooster?

A. No, sir; never anything like that.

Q. 42. What did you tell him with reference to *use* the binders that you had?

A. That I had the right to use fifty binders; that is all I told him.

Q. 43. Did you ever give the right to use any of these binders to Moses, Blum & Weil?

A. No, sir.

Q. 44. Or to Mr. Burschardt?

A. Not him either.

Q. 45. Wasn't it through you that the def'ts, Moses, Blum & Weil, used these binders in the year 1876 to 1879?

A. No, sir; there was an understanding between Burchardt and me which Mr. Moses knew; that I will bind for them under my license if they paid me a certain amount per dozen, but which would only commence when I received the money for it; but as they never paid me anything it never commenced—it was void.

Q. 46. How much money was you to receive?

A. It never came as far; they told me they would send for me, but they never sent for me.

Q. 47. How much money was you to receive from them; how much did you *ask* them you wanted?

A. I said before it never came so far. They did not offer me any. I did not ask them for anything.

Q. 48. Who was present when that understanding was had?

A. Well, I didn't call it an understanding.

Q. 49. Who was present when the understanding was had with Mr. Burchardt, and to which you testified in answer to Q. 45?

174 A. Nobody.

Q. 50. Was you there?

A. Burchardt and I was there.

Q. 51. Was there any price suggested per dozen that you were to receive?

A. No, sir; it never came as far as that; I am positive as to that.

Q. 52. Is that as true as everything you testified to?

A. I stated that in my former answer.

Q. 53. Question repeated.

A. I am under oath here; I was sworn before I began; yes.

Q. 54. How much money did you receive from Moses, Blum and Weil for the guides you delivered to them?

A. I am not positive. I got five dollars for a binder at that time, but I am not certain how much I charged them.

Q. 55. Do you keep books?

A. Yes, sir; sometimes—not all times; at that time I didn't; I only marked the orders down.

Q. 56. What did you mean in answer to Q. 5 when you said you kept books?

A. If I received an order I marked it down. I kept a book for that.

Q. 57. Then as near as you recollect you received for 11 binders $5 apiece from Moses, Blum & Weil—as near as you recollect it?

A. No, sir; I did not receive in full $55; there was some that I did not receive $5 for.

Q. 58. Look at Exh. 4; do you mean to say that you received $5 for making such a thing as that?

A. I didn't make any such thing as that. I made it better
175 than that.

Q. 59. Did you go to see Moses, Blum and Weil since this suit was commenced?

A. I have been there a couple of times after they sent for me. I don't know whether the suit was commenced. Burchardt was over to my place and made a proposition and made a copy of my license, and stopped till 12 o'clock at night in a saloon.

Def'ts' counsel moves to strike out the answer, commencing Mr. Burchardt came to my place, as not responsive to the question. Motion granted.

Q. 60. Have you been to see Moses, Blum and Weil within the past four weeks and try to induce them to settle this case?

A. I have been there, but not there to try to settle the case.

Q. 61. Did you deliver all those binders to Moses, Blum and Weil that you made yourself?

A. Yes, sir.

Q. 62. And the first binder you made for them was in 1876?

A. In 1876.

Redirect:

Q. 63. Did the def'ts, Moses, Blum and Weil, send any person to see you within the last three months in relation to this suit, or did any person call on you from the def'ts; and, if so, whom and when about?

Objected to as immaterial. Overruled. Exception.

A. Mr. Burchardt was 3 times to my place. I can't tell
176 exactly when it was; it may be within 3 months.

Q. 64. Did you see the def'ts or their employees use these binders at any time that you made for them?

A. Yes, sir.

Recross:

Q. 65. How many of these binders were they using when you saw them?

A. Sometimes 3, sometimes 2, sometimes 1, according to the season.

Q. 66. Do you mean to swear that you saw 3 binders used at any one time by the def'ts?

A. Yes, sir.

Q. 67. When?

A. It was in November, 1876 and 1879.

Q. 68. Were they working at these 3 at the same time?

A. I see 3 different girls working at 3 different machines with a different binder.

J. A. PIPO.

Sworn before me—

JOHN A. SHIELDS,
Master, &c.

Adjourned to Tuesday, March 14, 1882, at 2 p. m.

177 NEW YORK, *March* 14, 1882—2 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

GEORGE H. WOOSTER, Esq., called and duly sworn, deposes and says:

Q. 1. Are you the complainant in this action and owner of reissue letters patent No. 5180?

A. I am.

Q. 2. Have you been engaged in manufacturing business requiring the use of guides and binders like Exhs. 3 & 4 and Compl't's Exh. Double-Edge Folder herein; and, if so, how long, about?

A. I was so engaged in business which required the use of a large number of binders and guides like the exh's enquired of for nearly fifteen years.

Q. 3. Are you familiar with their construction and operation?

A. I am.

Q. 4. Have you read and examined reissued letters patent No. 5180, and are you familiar with the same?

A. I have read said patent a great number of times and am very familiar with it.

Q. 5. Look at Exhs. 3 & 4 and Exh. Double-Edged Folder and state whether said exh. are constructed in accordance with the claims set forth in reissued letters patent.

A. I have examined said Exhs. 3 & 4 and Exh. Double-Edged Folder and they do embody the form of guide claimed in said re-

issued letters patent, inasmuch as the guiding surface of Exh. Double-Edged Folder is so turned or folded as to cause the fabric passing through it to be simultaneously folded on both
178 edges, and Exhs. 3 & 4 are so constructed that a strip of material passing through them will be obliged to conform to the guiding surface of said exh's, and will thereby be folded in the centre and upon both edges simultaneously in the manner described and claimed in said patent.

Q. 6. Have you an established license fee under letters patent reissue 5180? And, if so, state what it is?

Objected to.

A. I have an established license fee and it is $50 per year for each guide which is made, used, caused to be used, sold, lent, given away, or kept on hand by any manufacturer, said license fee being payable in advance.

Q. 7. Have you granted such licenses to manufacturers in any number? And, if so, give the names of some.

Objected to.

A. I have granted such licenses to manufacturers largely; among others to Mens, Clark & King, and V. Henry Rothschild, Fitz Clark and Flagg, Rothschild Brothers, E. S. Mills & Co., H. Wallach Sons, Louis Doyphus & Co., and many others.

Q. 8. Have you a blank form of license with you similar to those you have granted licenses to?

A. I have, and now produce it, and it is marked Compl't's Exh. Blank Copy License, J. A. S., master, March 14, 1882.

Cross-examined by —— ——:

Q. 9. When did you first learn of the def'ts' infringement?

A. I don't remember.

Q. 10. State the time as near as you can.

A. I think it is some time within 3 years. We have a book with a large number of names covering the 7 years of this pat-
179 ent and I did tax my mind with the names connected therewith.

Q. 11. Do you enter the names and the time of your discovery of the infringement on this book?

A. When a man is reputed as infringing we enter the name, the number of guides that party reputes being used, &c.; also enter the day the report is made, generally.

Q. 12. Did you do so in relation to these def'ts?

A. I did not enter the report made concerning these def'ts.

Q. 13. Who did?

A. I think Mr. Comstock.

Q. 14. The entry was made, however, in that book?

A. Yes; I think it was.

Q. 15. Where is that book?

A. In my office, I think.

Def'ts' counsel gives notice to produce the book at the next session. The witness states that he declines to produce said book, as it is his own private property.

Q. 16. Who was the party that gave you the information that the def'ts were infringing?

A. I don't remember.

Q. 17. Did you ever grant any license to a man by the name of Pipo?

A. I did.

Q. 18. For how many guides?

A. I don't remember. The license is in evidence and speaks for itself.

Q. 19. Do you mean to be understood that you don't know
180 the number of guides that you gave a license for?

A. I do; I think it is something like 40 or 50, but I am not positive.

Q. 20. What did he pay you for it?

A. Gave me an assignment of his interest in a patent owned by him, and I gave him the license for $100 in cash for that patent.

Q. 21. What was the stated value of that patent?

A. There was no value stated.

Q. 22. Did you receive less than $50 from anybody at any time for the use of one of these guides for one year?

A. No; I don't think I ever did.

Q. 23. Not from a party who was using a large number of them?

A. Your question was concerning one. When parties wishing a license for a large number made application and paid their money in advance without suit and signed the license, binding themselves by the provisions it contained, I granted commutation rates, which were the same in all instances. The rates were as follows:

One guide one year, fifty dollars.
Three guides one year, one hundred dollars.
Five " " " one hundred & fifty dollars.
Ten " " " two " " "
Twenty " for one year, $500, or, when a person used as many as he desired without being obliged to report to me, $1,000 per year.

The commutation licenses were granted upon the licensees signing an agreement that I or my authorized agents should have the privilege of visiting the place where the guides were used at any reasonable time to ascertain whether more guides were being
181 used than licenses had been granted for.

Q. 24. Was it also understood and agreed at that time between you and the parties desiring the license that there should be no lawsuits concerning the same?

A. Something of that kind; the license will show for itself; it is in evidence.

Q. 25. All that took place there was that you signed the license and they signed it, and that they were bound by the conditions of the license only?

A. Yes; after they had sufficiently digested the conditions and provisions contained therein.

Q. 26. And the license you gave for these commutation rates is like unto the blank license in evidence with its blanks filled up according to the number of guides used?

A. Yes, sir.

Q. 27. Supposing a man had a license for the use of three guides at $50 per annum for each guide, supposing one of the guides before the expiration of the year became broken or useless, and he was compelled to have a new one made in its place, would you receive $50 more for the use of that guide for the unexpired term of that year in addition to the $50 received for the broken guide during that year?

Objected to, as the condition in the license should govern, and it is in evidence.

A. When a man makes a written agreement with me I expect him to live up to its provisions in every particular. There are none of these guides but what will last with proper use for more than one year; but if a man is careless and his guides are broken or de-
182 stroyed, it would be no fault of mine, and he would be obliged to suffer the consequences. A licensee is compelled to mark or stamp each guide before commencing to use, and I do not think he would have any right to mark or stamp another guide without my consent.

Def'ts' counsel moves to strike out the answer as not being responsive and repeats the question.

A. I certainly should be entitled to receive $50 more if a man should make an additional guide more than he was originally licensed to.

Q. 28. Even if it was to replace one that was broken before the expiration of the license?

A. In any event. The 2d clause of the license provides particularly for that.

Q. 29. Did these def'ts ever sign any license or agreement with you of any kind?

A. They never did.

Q. 30. Or have any conversation with you in reference to the same prior to the commencement of this action?

A. I think one of them was at the office after being notified of infringing.

Q. 31. How long before the expiration of your patent?

A. I don't remember when it was.

Q. 32. It was shortly before the suit was commenced, was it not?

A. I think it was before the suit was commenced, if at all. My memory is not clear on this subject.

GEO. H. WOOSTER.

Sworn before me—

JOHN A. SHIELDS,
Master, &c.

183 Adjourned to Friday, March 17, 1882, for motion, and adjourned to Tuesday, March 21, 1882, at 2 p. m., to proceed with case.

Adjourned to March 27th, 1882, at 11 a. m.

NEW YORK, *March 27th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: A. Comstock, Esq., of counsel for compl't, and Edwd. Gollehell for Joseph Koch, Esq., of counsel for def't.

ERNEST BROSEMAN, a witness produced on the part of the complainant, being duly sworn, deposes and says:

Q. 1. Please state your name, age, residence, and occupation.

A. Ernest Brosemann; I am 43 years old; I am a machinist, at 120 Leroy St., N. Y. city.

Q. 2. How long have you been engaged in that business?

A. Twenty-eight years.

Q. 3. Do you know the def'ts, Moses, Blum and Weil?

A. Not personally; I know the firm.

Q. 4. Did you at any time do any machinists' work for the firm of Moses, Blum and Weil?

A. Yes, sir.

Q. 5. Please state what it was and about when.

A. I made binders and folding-guides for them, some in
184 1877 and some in 1878.

Q. 6. What did the first bill of goods you manufactured for them amount to, if you recollect, and what was it for?

A. The first bill amounted to $10.50, and it was for seven binders or binding-guides to turn on both edges and on the centre, to be used on sewing-machines.

Q. 7. Will you look at Exhs. 3 & 4, J. A. S., master, and state whether the binders which you made for the def'ts at that time were like or unlike those?

A. Yes; No. 4 I made myself; No 3 was made at my place. Some of my hands made it, I suppose; it is of my pattern.

Q. 8. What machinist work did you do next for the defendants, if you recollect?

A. I made a collender roller with folders for them, amounting to about $23.

Q. 9. When about, if you recollect, was this?

A. Well, it was in the middle of 1878, about.

Q. 10. How many folders or folding-guides did you make for them at that time?

A. I remember two folding-guides for the collender roller and several Sweet binders to match the folds from those guides to work on the sewing-machines.

Q. 11. Is that all the double-edge folding-guides you made for the def'ts, as you now recollect?

A. Yes.

Q. 12. Please look at Exh. Double-Edge Folder, J. A. S., master,

Feb'y 16, 1882, and state whether the double-edge folders you made for the def'ts were like or substantially like that?

A. Yes.

Q. 13. Did the defendants pay you for those binders and
185 guides and rollers?

A. Yes, sir.

Q. 14. Were you ever in the defendants' place of business or factory?

A. Yes.

Q. 15. Did you show or assist the operatives of the defendants how to operate those folding-guides and binders at that time?

A. Yes, sir.

Q. 16. The first seven binders you made for them?

A. Yes.

Q. 17. And also the folding-guides and rollers?

A. No, sir.

Q. 18. Did the defendants ever state to you that the folders worked well or not?

Objected to as irrelevant and immaterial. Overruled. Exception.

A. No.

Q. 19. Did they ever make any complaint that they did not?

Objected to as immaterial and as already answered. Overruled. Exception.

A. No.

Q. 20. Did you ever see the operatives of the def'ts or the def'ts themselves operate those double-edge folders in connection with the rollers?

186 Objected to as irrelevant. Overruled. Exception.

A. No.

Q. 21. Do you know who set up those rollers in the def'ts' place of business and attached the double-edged folders to them?

A. Mr. Burchardt, the superintendent of the def'ts at that time, told me that he set them on and tried them, and I put on those corresponding Sweet binders and tried them on those strips made by those folders to show that they matched together and worked corresponding.

Objected to on the ground that the witness is not testifying of his own knowledge. Sustained so far as hearsay evidence is concerned.

Q. 22. Did you see the strips which were folded on those folding guides by those rollers at the time you say you matched them with the Sweet binders?

A. Yes.

Q. 23. In the def'ts' place of business?

A. Yes; I had them and had to show the hands how to work with them.

The last part of the answer objected to as not responsive to the question.

Cross-examined by Mr. GOLLCHELL:

Q. 24. Did you keep books of account at that time?

A. Yes, sir.

Q. 25. Did you make any entry of these sales to the def'ts?

A. Yes, sir.

Q. 26. Are you testifying to-day from memory or did you
187 refresh your memory from these entries?

A. No; from memory only.

Q. 27. Who ordered those binders and guides which you say you sold to them?

A. I don't remember.

Q. 28. Do you remember who paid for them—which one of the def'ts—or if the firm?

A. I sent the receipted bill to the office of Messrs. Moses, Blum and Weil, and received the money through the boy I sent there.

Q. 29. Do you remember whether it was in cash or by check?

A. I don't.

Q. 30. And did you receive your money through a boy in that way in both instances—both sales?

A. Yes.

Q. 31. You are quite sure that you sold them guides or binders the same as Exhibits 3 & 4, J. A. S., master, and Exhibit Double-Edge Folder, J. A. S., master?

A. Yes.

Q. 32. Could you explain any material difference between Exh's 3 & 4?

A. Yes.

Q. 33. Just state the difference.

A. No. 3 is a binder to take in a strip $\frac{5}{8}$ of an inch wide and No. 4 is a binder to take in a strip of $\frac{15}{16}$ of an inch wide.

Q. 34. Were they sold at the same price to the defendants?

A. Yes, sir.

Q. 35. Do you remember how many of these?

A. No, sir.

Q. 36. Do you know of your own personal knowledge that
188 the defendants ever used the binders and folders sold to them by you?

A. In looking at those guides occasionally, after months or so, I could see that they had been used pretty well; otherwise I could not know.

Q. 37. Could you swear that they were used by or for the def'ts for their own use?

A. No, sir.

Redirect by A. COMSTOCK, Esq.:

R. D. Q. 38. In answer to Q's. 36 & 37, you stated you could not of your own personal knowledge state if the guides had been used by the def'ts; now, about the binders, did you set them at work in the

def'ts' factory, as stated by you in answer to question 15, which is as follows: "Did you show or assist the operators of the def'ts how to operate those binders at that time?" And you answered "Yes." Is that a fact?

A. I showed the operators how to work with the binders.

R. D. Q. 39. Have the def'ts or any of their counsel for them, or any one professing to act in their behalf, been to see you in relation to this matter; and, if so, what did they state to you?

A. No, sir.

R. D. Q. 40. Has any one been to see you and stated that if you testified in this case against the def'ts that it would ruin your business, or words to that effect?

A. No, sir.

Recross by —— ——:

Q. 41. Do you know of your own knowledge that the defendants or their operators actually used the binders referred to after you had shown them how they worked?

A. No; I left them in operation and went out; they used
189 them while I was there about five minutes.

Q. 42. Do you know that they used them after you left?

A. No, I don't know.

Q. 43. You were supœnaed to attend here this morning, were you, and paid the usual fee?

A. Yes, sir.

ERNEST BROSEMANN.

Complainant rests.

Adjourned to Friday, March 31st, 1882, at 2 p. m., for defendants to introduce their testimony.

190 NEW YORK, *March 31st*, 1882—2 o'clock p. m.

Met pursuant to adjournment.

Present: George H. Wooster, Esq., the complainant, in person, and Franklin Bien, Esq., of counsel for def't-.

The master adjourns the further hearing in this case until Monday, April 3, 1882, at 12 o'clock m.

NEW YORK, *April 3d*, 1882—12 o'clock m.

Met pursuant to adjournment.

Present: George H. Wooster, Esq., the complainant, in person, and A. Comstock, Esq., of counsel for compl't, and Franklin Bien, Esq., of counsel for def'ts.

The motion made by def'ts' counsel to strike out the testimony of the witness Gimber is allowed, except as to 2 binders identified by the witness, unless the books are produced.

191 Def'ts' counsel moves that the examination of the witness Brosemann, having been proceeded with in his absence, caused by his illness on that day, that the complainants be directed to produce said Broseman for cross-examination, and def'ts' counsel offers to pay the expenses of such attendance.

Compl't's counsel states that the witness Broseman was in attend-

ance, was examined and cross-examined by the counsel for the def'ts to his full satisfaction, as appears by the record, and the complainant, after the witness' cross and recross examination, closed his case and rested.

Def'ts' counsel in reply states that the cross-examination was conducted by a clerk of def'ts' counsel not a lawyer and without authority.

In relation to the resting of the case on the part of the compl't def'ts' counsel states that it could not have been rested in consequence of the motion pending to strike out part of the compl't's testimony, which was only decided on this day.

192 Motion denied. Exception.

Def'ts' counsel gives notice that he proposes to apply to the court for an order compelling the attendance of Mr. Broseman.

Adjourned to Monday, April 10th, 1882, at 1 p. m.

NEW YORK, *April 10th*, 1882—1 o'clock p. m.

Met pursuant to adjournment.

Present: A. Comstock, Esq., of counsel for compl't, and Edward Gollchell, for Joseph Koch, Esq., of counsel for defendant-.

Adjourned on the application of the def'ts' counsel to Thursday, April 13th, 1882, at 11 o'clock a. m.

NEW YORK, *April 13th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Adjourned on the application of the def'ts' counsel to Friday, April 14th, 1882, at 11 o'clock a. m.

193 United States Circuit Court, Southern District of New York.
In Equity.

GEORGE H. WOOSTER *vs.* Solomon Moses *et al.*

Testimony taken on the part of the defendant under and pursuant to interlocutory decree of this court before John A. Shields, Esq., a master of said court, appointed *pro hac vice.*

NEW YORK, *April 14th*, 1882—11 o'clock a. m.

Present: A. Comstock, Esq., of counsel for compl't, and Joseph Koch, Esq., of counsel for def'ts.

Adjourned to Wednesday, April 19, 1882, at 11 o'clock.

NEW YORK, *April* 19, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Counsel present as before.

Adjourned to Friday, April 21st, 1882, at 1 p. m.

194 NEW YORK, *April 21st*, 1882—1 o'clock p. m.

Met pursuant to adjournment.

Present: George H. Wooster, Esq., the complainant, in person, and A. Comstock, Esq., of counsel for compl't, and Franklin Bien, Esq., of counsel for deft's.

ALBERT BORSCHARDT, a witness produced on the part of the defendant, being duly sworn, deposes and says:

Q. 1. What was your business in the year 1876?

A. I was employed by the firm of Moses, Blum and Weil on the 1st of July, 1876, as salesman for a term of four months. At the expiration of that time I took charge of the manufacturing department. I was employed there until the 1st of October, 1881.

Q. 2. Had you sole charge of the manufacturing department during the time you was with them?

A. Yes, sir.

Q. 3. When did you first see or hear of the binders or folding-guides claimed by the compl't herein?

A. As near as I can recollect, 1874.

Q. 4. Were there any in use in the def'ts' place at the time you took charge of the manufacturing department?

A. No, sir.

Q. 5. When were they first used by the def'ts?

A. They were first used in the latter part of November, 1876.

195 Q. 6. How did they come to be used?

A. Prior to my engagement with Moses, Blum and Weil I was engaged with the firm of Rothschild Bros. and Gutman; while in their employ I made the acquaintance of Mr. Pipo, who at that time was running binders for Rothschild Bros. & Gutman, which, as he told me, he had a right to use under a license from Mr. Wooster. At my leaving said firm of Rothschild Bros. & Gutman Mr. Pipo happened to be discharged at the same time. While I was out of employ, in the month of May, 1876, I met Mr. Pipo while passing his house in Hoboken, N. J., and he called me in and asked me whether I wouldn't go in business with him in manufacturing aprons. He made some samples for me, which were bound with the Wooster binding. I took the samples and sold the articles to several parties, and after selling them delivered him the orders, which he did not execute.

This was my first acquaintance with Mr. Pipo of any account.

I then met Mr. Pipo in the fall of 1876 in Leonard street, New York. He stopped me and asked me what I was doing, and I told him I had charge of the manufacturing department of Moses, Blum & Weil. He then asked me what kind of goods we manufactured, and asked me at the same time whether I had nothing for him to do. I told him no. He then asked me whether we were doing any binding. I told him no. He told me then, why wouldn't I do binding and he would give me right to use them. I answered him whether he actually had a right to use them in any other place besides Rothschild Bros. & Gutman. He said certainly he had;

196 that it was a part of the stipulation when he left Rothschild Bros. & Gutman that he could use them elsewhere. I then ordered him to make one binder for me, which I expected him to deliver. I waited for the binder, but did not get it. In the month of December, 1876, I met Mr. Pipo again, and asked him why he did not make that binder. He said that was all right—he didn't

have time—and that I should get it made elsewhere and that it would be all the same. I then went and ordered the binder of Mr. Broseman, which he made for me, and this is the way I got the binder for Moses, Blum & Weil.

Compl't's counsel objects to the answer of witness as going into matters that have no bearing upon the issues in this case and being conversations and hearsay testimony, which are perfectly immaterial and irrelevant, and compl't's counsel moves that the whole of said answer be stricken out to the words, "I then went and ordered," in the last part of the answer, except *and* the words, "I then ordered him to make one binder for me, which I expected him to deliver. I waited for the binder, but did not get it." Motion granted. Exception.

Q. 5. Did Mr. Pipo make any binders for the def'ts in November, 1876?

A. No, sir.

Q. 6. Did Mr. Piper make any binders for the def'ts in July, 1877?

A. No, sir.

197 Q. 7. Did Mr. Pipo make any binders for the def'ts in September, 1878?

A. No, sir.

Q. 8. Did Mr. Pipo make any binders for the def'ts in 1879?

A. No, sir.

Q. 9. Did you have charge of the def'ts' rooms from 1876 to 1881, where the machines were located used in your manufacturing department?

Objected to as leading and as calling for a conclusion. Overruled. Exception.

A. Yes, sir.

Q. 10. You saw the machines at work there, did you not?

A. Yes, sir.

Q. 11. Were there ever three binders used at any one time on the machines in the def'ts' place of business?

A. No, sir.

Q. 12. Did Mr. Pipo ever deliver to you any binders at def'ts' place of business, or at any other place for the def'ts, in the years 1876, 1877, 1878, and 1879?

A. Yes, sir.

Q. 13. State when and where.

A. He made and delivered one binder for me in the fall of 1877.

Q. 14. Is that the only one?

A. That is the only one.

Q. 15. During the years aforesaid did he offer you any binders?

A. Yes, sir.

Q. 16. Did you take any?

198 A. No, sir.

Q. 17. Who paid Mr. Pipo for the binder he made for you in the fall of 1877?

A. I did.
Q. 18. How much?
A. I think it was five dollars.
Q. 19. Has Mr. Pipo made any for you since the patent has expired?
A. Yes, sir.
Q. 20. How many?

Objected to as immaterial. Sustained. Exception.

Q. 21. Did you see Mr. Pipo after this suit in relation to the testimony that he was going to give on this accounting?
A. Yes.
Q. 22. Where did you see him?
A. In Hoboken.
Q. 23. Can you tell when?
A. It was the day after I received my subpœna as witness for Mr. Wooster.
Q. 24. Tell us what took place when you saw him.
A. I went to Mr. Pipo's house in the morning to see the license he had spoken of, which he said he had in his possession. He looked for the license and told me that the license was all right; that he would hunt for it and try to find it, and that I should call back that night. I called back about half-past eight that evening and went to his shop, where it was pretty dark. He showed me a
199 license, but I could not read it in his shop, and he asked me to go with him next door in a saloon, where there was light and I could read it. I read the license, and, not clearly understanding the same, took a copy of it, so that I would be able to read it at home. While I was taking the copy he commenced talking to me, and asked me what I thought it would be worth to him if he would testify in favor of Moses, Blum & Weil. I told him that I did not come there in the name of the firm, and that I could not say. He told me that if I would not fix it that Mr. Comstock had been there and had offered to fix things all right for him if he would testify in favor of Mr. Wooster. I told him I didn't believe that. He called a lager beer saloon keeper as a witness that Mr. Comstock had been there. On leaving him that evening in front of the saloon he told me that if I could get him $500 he would testify in favor of Moses, Blum & Weil. I told him I would let him know.
Q. 25. Did you let him know?
A. Yes, sir; I went there the next day and told him that the firm would have nothing to do with him.
Q. 26. Did you see him after that?
A. Yes, sir; he came to see me about a dozen times.
Q. 27. In reference to his testimony on this accounting?
A. Yes, sir.
Q. 28. What did he say?
A. He wanted me to make some arrangement for him with Moses, Blum & Weil—that is, to get some money to testify in their favor.
Q. 29. What was your answer?
200 A. I told him that I had no time.

Q. 30. During the time that you was with Moses, Blum & Weil how many binders did you use such as are claimed by Mr. Wooster as his patent?

A. From December, 1876, to December, 1877, we used one binder; from December, 1877, to December, 1878, we used two binders, and from December, 1878, to December, 1879, we used one binder.

Q. 31. Who made the binder which you used besides the one that Mr. Pipo made in 1877?

A. Mr. Broseman.

Q. 32. Look at Compl't's Exh. Double-Edge Folder, Feb'y 16, 1882, and state whether the def'ts, from 1876 to Oct. 5th, 1879, used the same or anything like it.

A. No, sir.

Q. 33. Do you know a man by the name of Gimbear?

A. Yes, sir.

Q. 34. Did he, from 1876 to Oct., 1879, make any binders for the def'ts?

A. No, sir.

Q. 35. Did he after that time?

A. No, sir.

Compl't's counsel objects to the question as going into matters that cannot possibly have anything to do with this accounting, as the patent expired on the 5th of October, 1879, and as wholly immaterial; that the question had not been read to the witness by the clerk before the objection was made.

201 Def'ts' counsel asks the clerk whether the question and answer were not down before the objection was made.

The master's clerk states that the question and answer were down before the objection was made.

Objection sustained. Exception taken.

Q. 36. Did you at any time from November, 1876, to Oct. 5th, 1879, send any operator or any other person to Gimbear's machine-shop to order binders for the defendants?

A. No, sir.

Q. 37. Did Gimber ever deliver any binders to the defendants between November, 1876, and October, 1879?

A. No, sir.

Q. 38. And all the binders that were used or made for the defendants on their order or on your order acting in their behalf are those that you have already testified to?

A. Yes, sir.

Q. 39. Do you know Mr. Pipo's reputation for truth and veracity in the place where he resides?

Objected to, as the witness is not shown to have any knowledge of the facts enquired of. Allowed. Exception.

A. Yes, sir.

Q. 40. What is it?

202 The same objection. The same ruling. Exception.

A. It is a very bad one.
Q. 41. Would you believe him under oath?

Objected to, as there has been no foundation laid for a question of that kind. Overruled. Exception.

A. No, sir.

Adjourned to Friday, April 28th, 1882, at 1.30 p. m.

203 NEW YORK, *April 28th*, 1882—1.30 o'clock p. m.

Met pursuant to adjournment.
Present: George H. Wooster, Esq., the complainant, in person, and A. Comstock, Esq., of counsel for compl't; also Franklin Bein, Esq., of counsel for def't-.

The cross-examination of ALBERT BORSCHADT by GEORGE H. WOOSTER, Esq.:

X Q. 42. Are you the Albert Borschardt who made return in this case, now shown you, under an order of the master to the defendants herein, subscribed and sworn to before Franklin Bien, notary public, on the 18th day of February, 1881?

204 Objected to. Def'ts' counsel objects to Mr. Wooster's conducting this examination, he being represented in this case by counsel who was present at the time and place the case was set down, and who has since left, & in view of this objection being raised and that notice was given to such att'y by defendants' counsel that the objection would be made. Overruled. Exception by defendants' counsel.
2nd objection, that the question is improper.

A. Yes, sir.
X 43. Who made the guides which you therein stated were made by the firm of Moses, Blum & Weil?

205 Objected to on the ground that the witness is asked to look at the return before answering, and def'ts' counsel claims the witness' right to look at the same before answering. Overruled. Exception.

A. One was made by Mr. Brosemann and one was made by Mr. Pipo.
X 44. What articles were manufactured by the use of those guides?

Objected to on the ground that compl't rested his case, and from his testimony only claimed damages for the use of certain guides, and it is immaterial for what purpose these guides were used. Overruled. Exception.

A. Gents' underwear—drawers.
X 45. Were no other goods made but drawers by the use of those guides?

206 A. No others, sir.

X 46. Who worked upon guides like this in the year 1876? Give the names of the operators.

Objected to as immaterial and not covered by the decree. Overruled. Exception.

A. I don't recollect.

X 47. Who worked upon these guides in 1877?

The same objection; same ruling; same exception.

A. I don't recollect.

X 48. Who worked upon the guides which you say were used in 1878 in that place?

The same objection; same ruling; same exception.

A. I don't recollect.

207 X 49. Do you recollect who worked upon them in 1879, previous to the 5th day of October?

The same objection and the further objection, def'ts having admitted using the same, it is immaterial who used them. Overruled. Exception.

A. I don't recollect.

X 50. What was the width of the binder that you say was used in 1876?

(Objected to as being immaterial. Overruled. Exception.)

A. The width of the binder that was used in 1876 was one inch or less.

X 51. Don't you know whether it was one inch or less?

Same objection. Overruled. Exception.

A. No.

X 52. What was the width of the binders used in 1877?

208 Same objection. Overruled. Exception.

A. Either one inch or less than one inch.

X 53. Can't you recollect which?

Same objection. Overruled. Exception.

A. No, sir.

X 54. Can you recollect the widths of those used in 1878 & 1879?

Same objection. Overruled. Exception.

A. Either one inch or less than one inch.

X 55. Is that the nearest you can remember or state?

Same objection. Overruled. Exception.

A. Yes, sir.

X 56. Did you use any binders of a less width than one inch?

209 Objected to as already answered. Overruled. Exception.

A. I don't remember.

X 57. Did you use any as wide as one inch?

Same objection. Overruled. Exception.

A. I don't remember.

X 58. Did you use any as narrow as $\frac{5}{8}$ of an inch?

A. I don't remember.

X 59. Who paid for the binders which were used in the years 1876, 1877, 1878, & 1879 that were used by the def'ts?

Same objection. Overruled. Exception.

A. I paid Mr. Pipo for one binder in the fall of 1877, and Moses, Blum & Weil paid for the one binder made in 1876.

X 60. Who did they pay?

210 Objected to, as it has not been shown that he knows who paid. He does not know anything about it. Overruled. Exception.

A. I don't know.

X 61. How many binders to your knowledge did Moses, Blum & Weil have made, or you for them, between the first of January, 1873, and the 5th of October, 1879?

The first part of the question objected to for the reason that it has not been shown that the def'ts had any made. Sustained. Exception.

X 62. Do you know how many binders were made, used, or kept on hand by or for the def'ts during the time you were in their employ?

211 Obj. to because there is no pretense here that the def'ts ever made any themselves, but, on the contrary, that they were made for the def'ts. Overruled. Exception.

A. Yes.

X 63. Did Moses, Blum & Weil, or you for them, give work out to be bound by hands working outside of the factory?

Objected to as immaterial. Overruled. Exception.

A. I can't answer that question, because the question is not in a way to be understood by people versed in the trade.

X 64. Did Moses, Blum & Weil give out work to be bound in the same manner as the binding was done in the factory when the binder was used which you say was made by Mr. Pipo?

212 Obj. to as immaterial. Overruled. Exception.

A. I can't understand the question.

X 65. In what manner was the material folded over the edge of the garment when it was folded by the guide like Exh. No. 3?

Obj. to as immaterial, for the reason that this examination is not for the purpose of finding out the infringement of a patent, but to assess damages. Overruled. Exception.

Further objected to for the reason that the exh. offered in evidence shows how they were bound, and is the best evidence.

3rd. That it has been proven by the compl't's witnesses how they were bound, which fact has not been contradicted by the def't,
213 and the evidence is only to be cumulative. Overruled. Exception.

A. I don't know what it refers to.

X 66. Question repeated.

Obj. to for the reason that it has been answered. Overruled. Exception.

A. I don't know what it means.

Adjourned to Wednesday at 1 o'clock.

NEW YORK, *May 3rd*, 1882—1 p. m.

Met pursuant to adjournment.

Present: Complainant in person and Mr. Edward Gottschann, on behalf of def'ts' counsel.

The complainant consents that this case shall be adjourned until Friday, May 5th, 1882, at 1 p. m., on account of the sickness of def'ts' counsel and at his request, but compl't gives notice
214 that if the witness Borchardt be not then produced for cross-examination that he shall make a motion before the master that the evidence of said witness be stricken out.

The master adjourns this reference until Friday, May 5th, 1882, at 1 p. m., and notifies the counsel to produce the witness Borchardt at that time for cross-examination.

215 NEW YORK, *May 5th*, 1882—1 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel as before.

Continuation of cross-examination of Mr. ALBERT BORCHARDT:

X 77. Did the defendants, Moses, Blum & Weil, give out work to be bound where the binding was to be folded in the centre and on one or both edges by the use of binders?

A. Not by the Wooster binder.

X 78. Did they by any other binder?

Objected to, unless it is confined to the Wooster binder. Overruled and exception.

A. Yes, sir.

X 79. To whom did they give out work to be bound in that way?

216 Objected to for the reason that there is no proof that any work was given out for which the compl't's binder was to be used, but, on the contrary, the evidence shows that there was no work given out for which the compl't's binder was used. Overruled and exception.

A. I don't recollect; I can't say that.

X 80. How many binders were used by parties outside doing work in that way?

Objected to as immaterial, as the defendants have not been connected with any parties alleged to have used the binders. Overruled. Exception.

A. I don't know.

X 81. Why don't you know?

Objected to, as the question is improper and as the witness
217 has already given an answer in that connection. Overruled. Exception.

A. Because I don't know.

X 82. Were you superintendent of that part of the business for Moses, Blum & Weil?

Objected to as already having been answered that he was. Overruled. Exception.

A. I was.

X 83. Did you give out the binders to the parties doing the work outside?

Objected to because there is no proof that there were any binders given out by Moses, Blum & Weil. Overruled. Exception.

A. I gave out no binders.

X 84. Did anybody to your knowledge?

218 Same objection. Overruled. Exception.

A. No.

X 85. Do you know who furnished the outside hands to whom this work was given with the binders?

Same objection, and also that he has already answered. Overruled. Exception.

A. No.

X 86. Did you receive the work in behalf of Moses, Blum & Weil that was bound, as before stated?

Objected to, as there is no proof that any work was done by the Wooster guide.

A. I received work for Moses, Blum & Weil.

X 87. Question repeated.

A. Same answer.

X 88. Question repeated.

Same objection. Overruled & exception.

219 A. The same answer.

X 89. You have stated that Moses, Blum & Weil gave out work to be bound. What I want to know is when that work was

returned to Moses, Blum & Weil after being completed; whether you received it in your capacity of superintendent or otherwise?

Objected to, as the witness has given no such evidence as stated in the question. Overruled. Exception.

A. Yes, sir.

X 90. How many different parties did that kind of work for Moses, Blum & Weil that you remember?

A. I can't say.

X 91. State about how many.

A. I never kept account.

X 92. Can't you give any estimate?

220 A. No.

X 93. Were there fifty?

A. I don't know.

X 94. Were there a hundred?

A. I don't know.

X 95. Will you swear there were more than a hundred?

A. No.

X 96. Will you swear there were as many as seventy-five?

A. No.

X 97. Were there as many as fifty?

Question objected to because it has already been answered. Question withdrawn.

X 98. How is it that you can state so positively concerning the exact number of guides made in '76 and '77, with dates,

221 and yet cannot remember who worked on those guides, how many worked upon them, and can't remember how many hands worked outside?

A. I am positive in all my statements regarding the two binders made by Messrs. Pipo & Broseman, but I have got no memory for names.

X 99. Have you any memory for numbers?

A. Not great.

X 100. Have you any memory at all for numbers?

Objected to as already answered. Overruled. Exception.

A. Yes.

X 101. But not a good memory, you think?

A. Not a great memory.

222 X 102. Now please try and state some number of people who did work outside, binding, as before questioned about?

Same objection as before taken on that topic. Overruled. Exception.

A. I don't remember.

X 103. Is your memory so bad that you can't give us any idea whether there was one or fifty or a hundred?

A. I don't know. I gave work out to be bound with worsted binding at one time to almost everybody, but I can't state how many were

put on with the binders and how many by hand. I know that none were put on with a Wooster binder.

Answer objected to as not responsive, and the master is re-
223 quested to strike out all the answer after the words "I don't know." Motion denied. Exception.

X 104. Can't you tell by the looks of binding after it is done whether it is done by the use of a binder or by hand?

Objected to—the words "a binder" and to the question, unless it is confined to the compl't's guides or binders.

A. No, sir.

X 105. How many binders like Exhibit 3 in this case has Mr. Pipo made for you since Oct. 5, 1879?

Objected to, because the patent had expired. Objection sustained. Exception.

X 106. Has Mr. Pipo ever made you any binders except those you have testified to for the defendants?

224 Objected to, unless the question is confined to Oct. 5, 1879, when the patent expired. Objection sustained. Exception.

X 107. Have you stated all the folding-guides that you remember Mr. Pipo has made for the firm of Moses, Blum & Weil?

Same objection. Overruled. Exception.

X 108. Did Moses, Blum & Weil give out any shirts to be bound with binding folded in the centre and on both edges during the time you were with them previous to Oct. 5, 1879?

Objected to, unless they were bound by the use of the guides. Overruled. Exception.

A. I don't remember.

225 X 109. Did you have shirts bound in that way, done either in the inside or outside of that factory of the firm, prior to Oct. 5, '79?

A. I don't remember any.

X 110. Did you bind in the factory strips in that way, in or outside of the factory, for box plaits for the shirts and cuffs of shirts, prior to Oct. 5, '79?

A. No.

X 111. State all the different kinds of goods that were bound during the period before mentioned with strips that were folded in the centre and upon one or both edges.

Objected to as having already been answered on cross-examination. Overruled and exception.

Question withdrawn.

X 112. Did not John A. Pipo make for the firm of Moses,
226 Blum & Weil, in November, 1876, four binders, one of which was three-quarters of an inch wide, one seven-eighths of an inch, and two one inch?

Objected to as already having been answered. Overruled and exception.

A. No.

X 113. Did not John A. Pipo in July, 1877, make for the firm of Moses, Blum & Weil three binders—one five-eighths of an inch wide, one three-quarters of an inch, and one one inch wide?

A. No.

X 114. Did not he make in Sept., 1878, for said firm one binder one inch wide?

A. No.

X 115. Did he not make in M'ch, 1879, three binders for said firm?

A. No.

227 X 116. How do you know he did not?

A. Because I know.

X 117. Is that the best answer you can give?

A. That is the best answer I can give.

X 118. Did you not tell Andrew Comstock in his office, at No. 71 West Broadway, that Mr. Pipo had made all the binders that Messrs. Moses, Blum & Weil had used, and that Mr. Pipo had given them a right to use said binders under a license which he had?

Objected to as indefinite, the witness not being in the employ of defendants, and unless they were present and not bound by any such statement. Overruled and exception.

A. No, sir.

228 X 118. Did Moses, Blum & Weil during the period that you were with them and before Oct. 5, 1879, use, or cause to be used, in their business any folding-guide which simultaneously folded a strip of material on both edges only?

Objected to as already having been answered. Overruled. Exception.

A. No, sir.

X 120. Did Moses, Blum & Weil use in their business any strips of material which were folded on both edges only?

Same objection; same ruling & exception.

A. No, sir.

X 121. Did Moses. Blum & Weil use in their business any folding-guides which were used in connection with a pair of rollers during the period before mentioned?

Same objection. Overruled. Exception.

229 A. No, sir.

X 122. Did they have a pair of rollers in their place of business at all during the period enquired of?

A. I don't think they did.

X 123. Can't you be positive about it?

A. No.

X 124. Will you swear positively that during the period inquired

of Moses, Blum & Weil did not have in their place of business a pair of rollers used in connection with one or more folding-guides, the folding-guide adapted to simultaneously fold a strip of material upon both edges, the pressing-rolls adapted to press the folds made by the folding-guide to an edge as the folded material passed through them?

A. I swear we had none.

230 X 125. State all the kind of drawers that were made by the folding-guides mentioned during the period enquired of for or by Moses, Blum & Weil.

A. Some with jean, some Canton flannel, and some flannel.

X 126. From what data did you make up the number of yards folded by the use of binders as stated in your affidavit or return in this case?

Objected to for the reason that there is no claim for damages except for the use of the guide. Overruled. Exception.

A. From the time I first commenced to use binders until the expiration of the patent I made it from my memory and knowing how much each binder did.

X 127. Do you mean what each binder did or what each binder would do?

231 A. I mean what each binder did.

X 128. What is your memory concerning what the binder did which you say was made in 1876—that is, from the time it was made up to Oct. 5, 1879?

A. I should say it did about 2,000 yards a year, or thereabouts, not being busy more than two-thirds of the year.

X 129. Now, as to the next binder which was made. How much did that do, according to your memory, up to Oct. 5, 1879?

A. I don't think there was more than 1,200 yards made on it altogether.

X 130. Why was there not more binding done by these binders in that shop?

Objected to as incompetent, immaterial, and irrelevant. Objection sustained.

232 X 131. Did Moses, Blum & Weil during the period you was with them up to Oct. 5, 1879, find that the binders, which you have testified to as having been used by or for them was all that their business required?

Same objection, and, further, that it is not shown that the witness knew what the def'ts required, or is he asked his knowledge on that subject. Objection sustained. Exception.

X 132. As superintendent for Moses, Blum & Weil, did you find that the binders which you testified to as having been used by or for them in their factory was or was not all that their business required?

Objected to for the reason that the plaintiff cannot claim damages for something that was not in existence prior to the expira-

233 tion of this patent, and, further, that it is incompetent, immaterial, and irrelevant. Overruled. Exception.

A. That's all they needed.

X 133. How did you receive your pay for services for Moses, Blum & Weil; did you receive a salary?

Objected to as immaterial, incompetent, and irrelevant. Overruled. Exception.

A. I got a salary during the whole time I was with them.

X 134. Did you not, during any of the period of the time that you were with them previous to Oct., 1879, manufacture goods for them by contract or percentage?

Objected to as incompetent and immaterial, and that the question must be confined to goods made by the use of the guides. Objection sustained.

234 Adjourned to Friday, May 12, 1882, at 1 p. m.

NEW YORK, FRIDAY, *May 12th*, 1882—1 o'clock p. m.

Adjourned to Monday, May 15th, 1882, at 11 o'clock a. m.

NEW YORK, *May 15th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: George H. Wooster, Esq., the complainant, in person, and Franklin Bien, Esq., of counsel for def'ts.

The cross-examination of Mr. BORCHARDT continued by GEORGE H. WOOSTER, Esq.

X 135. You were asked in X 77, Did the def'ts give out work to be bound in a certain way? Your answer was, Not by "the Wooster binder." In X 78, Did they by any other binder? Your
235 answer was, "Yes, sir." Will you please state as near as you can recollect to how many you gave out work to be bound in that way and "not by the Wooster binder?"

A. At one time to almost everybody that was working for the firm.

X 136. State about how many was working for the firm at that time.

A. I can't recollect.

X 137. Please state about how many; you are not asked to give the exact number.

A. More than one and less than a dozen, I should say.

X 138. Did the firm keep any books, or you for them, that will show the number of hands who worked for them during the period enquired of, and who they were?

236 Objected to. Overruled. Exception.

A. No.

X 139. What record did they keep of the parties to whom they gave out work to be bound?

The form of the question obj. to by def'ts' counsel. Sustained.

X 170. Do you know if there was any record kept of the names of the hands and the work that was given out to be done by them?

A. I don't know.

X 141. And yet you were superintendent of their manufacturing department and had full charge of that business?

Objected to as having been already answered a number of times. Further objected to as an assumption of fact. Overruled. Exception.

237 A. Yes, sir.

X 142. State fully what your specific duties were as superintendent of that manufacturing department.

A. I received goods when they were bought, had them cut and made up, [and] hired help and discharged them.

X 143. Is that all?

A. That is all.

X 144. Who bought the goods?

Obj. to as immaterial and irrelevant, and further objected to, as he has not shown knowledge. Overruled. Exception.

A. The firm.

X 145. Did you buy anything for that manufacturing department?

A. I bought tools.

238 X 146. Who kept the record, if any was kept, of goods that were allowed to go out of the shop to be made?

Obj. to—1st, to the form of the question; 2nd, unless the question is confined to work for which the guides were used. Overruled. Exception.

A. I kept a memorandum of that.

X 147. Where is that memorandum now?

A. When the goods were returned I tore it up.

X 148. Was this memorandum in book form or merely written on a slip of paper?

A. It was on slips of paper.

X 149. Who was your forewoman for the three years previous to Oct. 1, '79?

A. I had none.

239 X 150. State the names of any cutters that were employed there prior to Oct., 1879.

Obj. to. Overruled. Exception.

A. William Bennett, Peter Bennett—that is all I know that I remember. There might be more.

Def'ts' counsel requests that Mr. Comstock being present, he conduct the case.

X 151. Where are those Bennetts now—in whose employ?

Obj. to. Overruled. Exception.

A. They are dead; in nobody's employ.

X 152. Are you testifying from your own knowledge concerning that fact?

A. I have seen them both dead and buried.

X 153. Do you remember the names of any employees of that firm who are not dead and buried that were there previous
240 to Oct. 1, '79, and while you were in the employ of the def'ts?

Objected to as immaterial. Overruled. Exception.

A. Yes, sir.

X 154. State their names and where they reside and in whose employ they now are, if you know.

A. Joseph Schloss; he is now employed by Moses, Blum & Weil; he was then a clerk and around the house and around the books—all over. Mr. Losner; he was book-keeper in the office downstairs; he used to come upstairs; he is now in the employ of Moses, Blum & Weil. August Schmidt; he was employed in the manufacturing and shipping department; he packed up goods; he is now employed by Moses, Blum & Weil. That is all I can recollect.

X 155. Can't you recollect the names of any one who was
241 exclusively employed in the manufacturing department, where you were superintendent?

A. No; none that was employed exclusively.

X 156. How many hands were employed in the manufacturing department of Moses, Blum & Weil at any time during the period enquired of?

A. Eight, nine, or ten altogether.

X 157. Did you stay at a saloon in Hoboken, near Mr. Pipo's shop, one night until about 12 o'clock, endeavoring to induce Mr. Pipo to give testimony favorable to def'ts in this matter pending before the master?

A. I did not.

X 158. Were you in the saloon enquired of with Mr. Pipo at any time?

Obj. to as immaterial. Overruled. Exception.

242 A. Yes, sir.

X 159. To how late an hour?

A. Till about half-past ten o'clock.

X 160. When was this?

A. The day after I received the subpœna from Mr. Comstock.

X 161. Who was present?

A. A young man opening oysters, the wife of the saloon-keeper, and Mr. Pipo.

X 162. Previous to going there and after receiving the subpœna mentioned, had you seen and conversed with either of the def'ts?

A. No, sir.

X 163. After receiving the subpœna and before the time mentioned therein for you to appear before the master, did you
243 talk with either of the def'ts in this case?

Obj. to unless it is confined to anything about this case. Sustained.

X 164. I mean, did you talk with the def'ts concerning this case after you had been subpœnaed to attend here and testify on behalf of compl't?

A. Yes, sir.

X 165. At what time in the evening did you first see Mr. Pipo on the night of the visit to the saloon in Hoboken?

A. After 8 o'clock.

X 166. Did you copy the license belonging to Mr. Pipo heretofore referred to in this case that evening in the saloon?

A. Yes, sir.

X 167. To whom did you give this copy?

Obj. to as immaterial. Overruled. Exception.

244 A. I think I have got it yet.

X 168. To whom did you show it first, and when?

A. I think I showed it to my brother, either the next day or the day after.

X 169. Did you show it to either of the def'ts or their counsel?

A. I didn't show it to the def'ts, and I don't know whether I showed it to their counsel.

X 170. Can't remember, can you?

Obj. to as already answered. Overruled. Exception.

A. I don't know; I don't recollect whether I showed it to their counsel; I am positive I did not show it to the def'ts.

X 171. This license was a pretty long document, was it not?

Obj. to; the license speaks for itself. Sustained.

245 X 171. Please state what your object was in making a copy of that license.

Obj. to for the reason that the evidence shows that the witness was not in the employ of def'ts, the compl't's evidence showing that the def'ts never saw it. It is immaterial and irrelevant what the object of the witness was, as it would not bind the def'ts. Sustained.

Redirect by J. BIEN, Esq.:

Q. 172. Did you at any time, directly or indirectly, have any interest the in def'ts' business other than that of an employee?

A. I had not.

Q. 173. Did you receive anything from the def'ts except your
246 salary during the time that you were with them?

A. I did not.

Q. 174. How did you come to go to Hoboken to see Mr. Pipo?

A. Mr. Pipo kept running after me; that is the reason I went to see him.

Q. 175. What took place between you and Pipo when you got to that saloon?

A. I copied his license, and Mr. Pipo told me unless I could in-

duce the firm of Moses, Blum & Weil to pay him $500 to testify in their favor that he would testify in favor of Mr. Wooster, as Mr. Comstock had been there the night previous and made him a nice offer to testify for Mr. Wooster.

Compl't moves to strike out the foregoing answer as im-
247 proper and as collateral matter to the issue in this case; and, further, that a witness cannot be impeached except by testimony as to general reputation and character, and as hearsay evidence, and as showing no connection between witness and the compl't.

Q. 177. This took place after you had been subpœnaed by Mr. Wooster as a witness on this hearing?

A. Yes, sir.

Q. 178. And after this conversation with Pipo you came here on this examination in pursuance of that subpœna?

A. Yes, sir.

Q. 179. Did Mr. Wooster say anything to you when you got here?

A. Yes, sir.

Q. 180. What did he say?

248 A. First he commenced to talk about my button-sewing attachment, and told me he thought it was a good thing, and told me if I was ready to do something with that to see him in reference to it. I told him I would. Then he commenced talking of binders, and walked down with me to this office here. As my answer did not suit him, he told me he did not want me. Then when I asked him when the court was adjourned whether I would come here again, he said, No; we don't want you.

Q. 181. What did you say to Mr. Comstock when you called at his office at No. 71 West Broadway, at the time enquired of by the compl't at this examination?

A. I told him that I came there for the purpose of ascertain-
249 ing what money he claimed from our firm—from the firm of Moses, Blum & Weil. Mr. Comstock told me how much it was. I told Mr. Comstock it was an exorbitant sum. I then asked him why he had such a large claim. He said that they charged $50 for each binder per annum, and that, according to his information, the firm had used as many binders as to make the amount correct. I then told him that he was misinformed; that if he wished to receive the money which the firm actually owed him that they would be willing to pay it to him. That is all.

Q. 182. In answer to X 77 (question here read to witness) you answered "Not by the Wooster binder." By what binder did you mean?

A. By hand.

Recross:

250 X 183. Before you saw Mr. Wooster in the building, had you been to see Mr. Comstock at 240 Broadway and mentioned to him that you had a button-sewing attachment which you would like Mr. Wooster to take hold of?

A. No, sir.

X 184. Did Mr. Wooster, before coming down to this room, state to you, after asking you concerning what you would say, state that your memory did not agree with the statement of Mr. Pipo and Mr. Booseman?

A. Not that I recollect.

X 185. Did not Mr. Wooster tell you, after you came to this room, that he believed you were not telling the truth, and that he did not wish to examine you?

A. He did not use these words.

251 X 186. Did he use words to that effect?

A. Yes, sir.

Re-redirect:

Q. 187. Then Mr. Wooster stated to you in substance that he believed Mr. Pipo's testimony in preference to yours?

Obj. to as not proper examination.

The witness was asked to give Mr. Wooster's language or his.

Re-recross:

X 188. Did Moses, Blum & Weil give out any binding to be done by hand previous to Oct., '79, while you were with them, where the binding was required to be folded in any way except in the centre only?

Obj. to for the reason that the compl'ts are excluded, having finished with the witness.

252 2nd. Immaterial what kind of work def'ts gave out to be done by hand. Sustained. Exception.

(S'g'd) ALBERT BORCHARDT.

Sworn before me—

(S'g'd) JOHN A. SHIELDS,
Master, &c.

(Adjourned to Friday, May 19, 1882, at 11 o'clock a. m.)

NEW YORK, *May 19th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Counsel for respective parties present.

By consent of counsel for both parties this examination is adjourned until Tuesday, May 23, 1882, at 11 o'clock a. m.

253 NEW YORK, *May 23rd*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Counsel present: A. Comstock, Esq., for compl't; Joseph Koch, Esq., for defendant; also present Mr. George H. Wooster, the complainant.

Counsel for the defendant appears and asks an adjournment. The master sets the examination down peremptorily for Monday, May 29, 1882, at 11 a. m.

NEW YORK, *May 29th*, 1882—11 o'clock a. m.

Met pursuant to adjournment.

254 Present: Franklin Bien, Esq'r, of counsel for def't, and George H. Wooster, Esq., the complainant, in person, and Thomas B. Browning, Esq., of counsel for compl't.

JUSTUS BRUNS, a witness produced on the part of the def't- being duly sworn, deposes and says:

Q. 1. Please state your name, age, residence, and occupation.

A. Justus Bruns; I am 38 years of age; I reside on Union Hill, New Jersey; I am a carpenter; my place of business is in Hoboken, N. J.

Q. 2. Do you know John A. Pipo, heretofore a witness on the part of the compl't?

A. I do.

Q. 3. Will you describe what kind of a looking man Mr.

255 Pipo is—I mean the appearance of his face?

A. He has got a pock-marked face and a half a nose.

Q. 4. Where does the John A. Pipo that you mean and have described reside.

A. In Hoboken, New Jersey.

Q. 5. How long have you known him?

A. About 7 or 8 years.

Q. 6. Did he ever tell you that he had been a witness in this case?

A. He did.

Q. 7. Do you know his reputation for truth and veracity in the locality where he resides?

A. Yes; some of it.

Q. 8. What is it?

256 Objected to; witness testified that he knows only some of his reputation.

Question withdrawn.

Q. 9. Do you know his general reputation for truth and veracity in the locality where he resides?

A. I do.

Q. 10. What is it—good or bad?

Objected to as leading. Sustained. Exception.

Q. 11. What is it?

A. His general reputation—nobody thinks anything of him.

Q. 12. Would you believe him under oath?

Objected to on the ground that his belief must be based upon what the witness knows of John A. Pipo's reputation, and that the question does not appear to be so based. Overruled. Exception.

A. No, sir.

257 Q. 13. Have you had any conversation with John A. Pipo about the testimony he (Pipo) gave in this matter for Mr. Wooster?

Objected to—1st, as hearsay; 2nd, as not being evidence of his general reputation. Overruled. Exception.

A. I had.

Q. 14. State the conversation.

The same objection; same ruling & exception.

A. He came in my shop; I asked him had he received $10 from the other party—I don't know the party—the party whom he was witness for. He told me he got two $5 bills—$10; and he said he wouldn't go on the stand and give witness for under $25. He said if Borchardt, the superintendent for Moses, Blum & Weil, would give him $500 he would go for him on his side; he would go for
258 the party that would give him the most money; that is what Pipo told me.

Q. 15. Did Pipo tell you that he was to give testimony or that he had given testimony in this case?

Objected to as a leading question. Sustained. Exception.

Q. 16. When did this conversation take place?

A. About the middle of April—last month.

Q. 17. Did Pipo say anything about only getting $10?

Objected to as leading. Sustained. Exception.

Q. 18. Did you have any other conversation with Mr. Pipo, or did he say anything else that you have not given? If so, state what he did say about the testimony that he gave in this case.

A. I said, Pipo, if you are going on in that way they will get you arrested in New York for perjury. He said, They ain't smart
259 enough for that. That is all he said that same day at that time.

Q. 19. Did you have any other conversation with him after that about his testimony in this case? If so, state what it was.

A. He said that he had to go on the stand again for a witness, and he said he wouldn't go under $25.

Q. 20. Do you know whether Pipo was ever locked up in jail in Hudson county, New Jersey?

Objected to. It don't appear that he was arrested for any crime, if he was arrested; and, further, that it is proof of a particular, specific offence, which is not admissable. Overruled. Exception.

A. He told me himself twice that he (Pipo) was in jail.

Cross-examined by THOS. B. BROWNING, Esq.:

260 X 21. How do you fix the time of the first conversation with Pipo?

A. Because I was working the Sunday in New York, and this was a day or two after that.

X 22. Are you in the habit of working on Sundays?

A. Sometimes—when the work cannot be done on a week day.

X 23. What particular Sunday was that?

A. About the middle of April—last month.
X 24. How many weeks was it?
A. Well, about five weeks ago now.
X 25. Who were you working for on that particular Sunday?
A. Rothschild, in Leonard St. and West Broadway.
X. 26. What work were you doing there?
261 A. Planing off cutting tables.
X 27. Do you know a person employed there named Albert Borchardt?
A. I do; yes, sir.
X 28. Was it through his influence that you were employed to do this work of planing off cutting tables there?
A. No, sir.
X 29. Is he a friend of yours—Borchardt?
A. Not a particular friend.
X 30. Did you talk with Borchardt at all about this case?
A. I did.
X 31. Are you aware that Borchardt has been a witness in this case?
A. I heard so from Pipo.
X 32. Didn't Borchardt ever tell you so?
262 A. No.
X 33. What was the conversation between you and Borchardt in reference to this case?
A. I don't remember.
X 34. How long ago did that conversation take place?
A. I can't tell exactly the time; it was before Pipo had the conversation with me.
X 35. Can you tell me whether or not it was in the month of April last?
A. I guess it was.
X 36. Do you mean to tell me that you cannot remember the conversation that took place between you and Borchardt in the month of April last?

Obj. to as being already answered. Overruled. Exception.

A. I cannot remember.
X 37. When did you see Borchardt last?
263 Obj. to as immaterial. Overruled. Exception.

A. This morning.
X 38. Do you see Borchardt frequently?
A. Yes.
X 39. Is he a neighbor of yours?
A. He is; he lives about 3 or 4 blocks from me.
X 40. Did you see Borchardt yesterday?
A. No, I did not.
X 41. Is Borchardt one of the persons whom you have heard speak of Pipo's character?
A. No, sir.
X 42. Have you never heard Borchardt speak of Pipo's character?

Obj. to as immaterial & irrelevant and as already answered. Overruled. Exception.

264 A. I did not.

X 43. What time in the day or evening was it that you had this conversation with Pipo, about the middle of April last?

A. It was in the morning, near to dinner time.

X 44. How was it that on that occasion you asked Pipo if he had received $10 from the other party?

A. He told it to the man downstairs, and that is the reason I asked him.

X 45. Do you know yourself that Pipo had told to the man downstairs that he (Pipo) had received $10 from the other party?

A. Pipo told me himself, and the man downstairs told me.

Compl't's counsel moves to strike out the last question. Def'ts' counsel objects.

265 X 46. Were you present at any conversation with Pipo and the man downstairs in which Pipo had stated to the man that he had received $10 from the other party?

A. Not at that time; no.

X 47. Will you state again what Pipo said in reference to going on the stand as a witness in this case?

Obj. to on 2 grounds: 1st, that he has already stated; 2nd, that he must ask for the whole conversation which the witness gave on the direct. Overruled. Exception.

Another objection, that counsel cannot ask what Pipo said, but what the conversation was. Overruled. Exception.

A. That he wouldn't go under $25; that he would go for the party that paid him the most money. If Borchardt paid him $500 he would go for Moses, Blum & Weil.

266 X 48. Now, will you state when and where you had a second conversation with Pipo in relation to this case?

A. It was in the same month, in my shop, Court St., between 1st and 2nd streets, Hoboken.

X 49. What part of last month did this last conversation take place?

A. It was about the middle of April—last month.

X 50. Which conversation took place first, the one in which the $25 was spoken of or the other one?

A. I can't tell exactly; I know the conversation took place a few days after *the* placing the tables at Rothschild's, when he was talking about the $25 and the $500 and the $2 bills.

X 51. How far apart were these conversations?

A. About five or six days.

267 X 52. Can you now state which conversation between you and Pipo took place first—the conversation in which the $25 and the $500 was spoken of or the other conversation?

A. What other conversation? He spoke about the other first.

X 53. Now, will you state again this other conversation with Pipo?

A. Which other do you mean? I stated that when he came the second time in the shop he said he received $10, and that he would not go under $25. I asked him why he didn't go for the other party; he said he didn't get the $500, and that he would go for the party that gave him the most money.

X 54. Will you state again the first conversation that you had with Pipo?

A. He told me the same thing over again.

268 X 55. State, if you please, whom you have heard speak of Pipo's general reputation.

Objected to. Overruled. Exception.

A. I haven't got the names with me; I can give some names: Billy Wendt, Francis Vitt, a man named Eipner—I think his name is John; I am not sure. I think there are others—a good many. I don't remember any other names at present—Billy Hoffman. There are others, but I do not remember the names now.

X 56. Who is Billy Hoffman?

A. My partner.

X 57. Who is Billy Wendt?

A. A man who is working for me.

X 58. How long has he been working for you?

Obj. to as immaterial. Overruled. Exception.

A. I can't tell how many years.

X 59. Who is Francis Vitt?

269 A. A gentleman downstairs in the other shop.

X 60. Who is Eisner?

A. A man who is working for me. He worked for me only 1 or 2 weeks.

X 61. Do you know how long Eisner has known Pipo?

A. I didn't ask him.

X 62. What have you ever heard Eisner say about Pipo's character?

A. I heard him say about the $25 that the man that wanted so much money was a bad man.

X 63. Is that all that you have heard him say about Pipo's general character or reputation?

A. He said he wouldn't believe that man.

X 64. Is that all that you have heard Eisner say about Pipo's character?

A. So far as I can remember at the present time.

270 X 65. What have you ever heard Billy Wendt say about Pipo's character?

A. About the same thing as the other man said.

X 66. Did you ever hear Wendt speak of any act or conversation of Pipo's, except that relating to the $25 and the $500?

A. He said the same as the other man; that he don't believe the man.

X 67. When did he say that—upon what occasion was it when he said that?

A. When Pipo went out of the shop.

X 68. Did you ever hear Wendt speak about Pipo's character except on this occasion?

A. Yes.

X 69. What did he say?

A. That he was a liar; that he tells stories; that no one believes him.

271 X 70. Did Wendt ever speak of anything Pipo had done?

A. I didn't hear.

X 71. Tell me what you have heard Francis Vitt say about Pipo's general reputation?

A. He said the same as all the rest said. He wouldn't believe him. He said that last month. It was the same time when he said Pipo said he received $10.

X 72. Has Vitt ever said anything else about Pipo?

A. Not that I remember.

X 73. Tell me what you have heard Billy Hoffman say about Pipo's general character.

A. That he wouldn't believe him. He said it a dozen times. He said it last year before we ever heard anything about this case.

X 74. Did he ever give any reason why he wouldn't believe him?

272 A. I never asked him.

X 75. Who spoke to you about coming here as a witness?

A. The gentleman here—def'ts' counsel.

X 76. Is he the only person who has spoken to you about being a witness in this case?

A. Yes; he is the only person who spoke to me—that is, another person spoke to me—to send me to this gentleman. It was Mr. Borchardt. He is employed at Rothschilds'.

X 77. State fully, if you please, what Borchardt has said to you about this case.

Obj. to as immaterial, irrelevant, and incompetent. Sustained. Exception.

X 78. Have you been offered any money to testify in this case?

A. No, sir; I am not Pipo. I do not do those things on
273 the stand for money. I was not subpœnaed to come here. I was never locked up.

Q. 79. You testified that Pipo had been locked up in Hudson county jail; can you tell me what that was for?

Question withdrawn.

(S'g'd) JUSTUS BRUNS.

Sworn before me—

JOHN A. SHIELDS,
Master, &c.

Adjourned to Friday, June 2nd, 1882.

NEW YORK, *June 2nd*, 1882—1 o'clock p. m.

Met pursuant to adjournment.

Present: A. Comstock, Esq., & Thos. B. Browning, Esq., of counsel for compl't, and Edward Gottschall, Esq., for Franklin Bien, Esq., of counsel for def'ts.

Adjourned by consent to Tuesday, June 6, 1882, at 1 o'clock p. m.

274 Adjourned till Monday, June 12th, 1882, at 11 o'clock a. m.

NEW YORK, *June 17th*, 1882—10 o'clock a. m.

Met pursuant to adjournment.

Counsel present as before.

Counsel for defendant- states that he has subpœnaed a witness, and when he appeared he turned out to be the wrong man and not the party the subpœna called for; he agrees to close the case before Saturday, June 24, 1882.

The master, having adjourned this case for two or three times at the request of the defendants, now orders that this case proceed on Monday, June 19, 1882, at 10.30 —, and that the defendants produce their witnesses and close their case on that day.

275 NEW YORK, *June* 19, 1882—10.30 a. m.

Met pursuant to adjournment.

Present: Counsel for compl't only, neither def'ts nor their counsel appearing.

Counsel for compl't moves, as heretofore moved, that def'ts' case be deemed and taken as closed pursuant to the order of the master above.

The master states that he has just received a telegram from def'ts' counsel, as follows: "Father very low; won't be down to-day; adjourn to Wednesday. Franklin Bien."

The master grants the motion to close def'ts' case unless def'ts produce witnesses and proceed on Wednesday, June 21st, 1882, at 10.30 a. m.

Adjourned to Wednesday, June 21st, 1882, at 10.30 a. m., with condition as above provided.

276 NEW YORK, *June* 21, 1882—10.30 a. m.

Met pursuant to adjournment.

Present: Mr. Browning, of counsel for the compl't, and the compl't in person. No appearance for the def'ts.

Counsel for compl't states that as it is now 11 o'clock and no appearance has been made for the def'ts he now moves that the case on the part of the def'ts be closed.

The master grants the motion.

JOHN A. PIPO, being recalled by the compl't, testifies as follows:

Q. 1. Do you know Justus Bruns, a carpenter doing business in Hoboken, N. J.?

A. Yes, sir.

Q. 2. Is your acquaintance with him a slight one or an intimate one?
A. I only know him by sight. I never had much to do with him or to say to him.

277 Q. 3. Did he ever ask you if you had received $10 from the compl't in this case for being a witness in this case?

A. Yes, sir; but I told him I never received any money for my testimony, but I generally got paid for any time that I lost after giving my testimony. I also told him that I expected to be paid for the time I lost from my business.

Q. 4. State how many times you attended to give testimony in this case.

A. As much as I recollect, 2 or 3 times.

Q. 5. Did you show to Bruns the $10—two $5 bills—that you received from the compl't in this case?

A. Not to my recollection; I don't believe I did.

Q. 6. Did you ever state to Bruns, or in his presence, that you would not go on the stand as a witness again for less than $25?

A. No, sir.

Q. 7. Did you ever state to Bruns, or in his presence, that if Borchard, the superintendent for Moses, Blum & Weil, would

278 give you $500 you would go for him on his side; that you would go for the party that would give you the most money?

A. No, sir.

Q. 8. Did Bruns ever say to you that if you went on in that way they would get you arrested in New York for perjury, and did you say in reply that they were not smart enough for that?

A. No, sir.

Q. 9. State whether you were ever locked up in jail in Hudson Co., N. J., and, if so, for what.

A. Yes, sir; I was, only for some words—quarreling.

(S'g'd) J. A. PIPO.

Sworn before me—

(S'g'd) JOHN A. SHIELDS, *Master.*

Adjourned to Thursday, June 22, 1882, at 11 a. m.

279 Def'ts' counsel appears at 11.20 a. m. with a witness, Richard Schoen, and finds that the foregoing has taken place. Mr. Wooster, Pipo, and Mr. Browning, of counsel, were present and left. Mr. Bien states that he has been sick since Monday, unable to attend to any business, and only came down to-day to attend to this case, and is prepared to go on at the present moment, and that he received word from his clerk that the case was set down at 11 a. m.

Def'ts' counsel gives notice of motion to-morrow to reopen the case and take the evidence of his witnesses.

NEW YORK, *June* 22, 1882—11 a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties and the compl't in person.

280 A motion is made by the def'ts' counsel, as by the annexed notice served upon the compl't's counsel.

Compl't's counsel states, and urges before the master, that by the said notice and papers referred to therein the def'ts' counsel shows no sufficient or well-founded reason for the granting of said motion, and moves that the same be denied.

Motion made by def'ts' counsel denied.

Mr. ANDREW COMSTOCK, being called by compl't and duly sworn, deposes and says:

Q. 1. Did Albert Borchardt, a witness in this case, have any conversation with you at your office, 71 West Broadway, N. Y. city, concerning what Mr. Pipo had done for the def'ts', Moses, Blum & Weil? If so, please state what was said on that occasion.

Obj. to as indefinite as to time.

281 U. S. Circuit Court.

GEORGE H. WOOSTER *against* SOLOMON MOSES *et al.*

Take notice that I shall move before John A. Shields, Esq., master herein, to reopen this case on the facts as they appear on the record, and that I shall then and there, to wit, at room 78, post office building, New York city, June 22, '82, at 11 a. m., proceed with the examination of my witnesses and the cross-examination of the witness Pipo, whose examination-in-chief was this day taken, and for such further order as may be just.

Dated N. Y., June 22, '82.

(S'g'd) JOSEPH KOCH,
Att'y for Def'd'ts, 320 *B'dway.*

To A. Comstock, Esq., 237 B'way, N. Y.

282 (Endorsed:) U. S. circuit court. George H. Wooster *vs.* Solomon Moses *et al.* Notice of motion. Joseph Koch, def'd'ts' att'y, 320 B'dway, N. Y. To A. Comstock, Esq., complainant's att'y. Rec'd June 21, '82.

283 2nd. Borchardt's statements would not bind the witness.

3rd. That the conversation referred to in Q. 1 was brought out by the compl't on cross-examination of the witness Borchardt under def'ts' objections, that the compl't made the witness Borchardt their witness on that topic, and that they cannot now attempt to contradict him.

Obj. overruled and exception taken.

A. About the time of the commencement of this suit Mr. Borchardt called at my office, as he stated to me, in behalf of Moses, Blum & Weil, and wanted to know how much Mr. Wooster claimed of them. I informed him that I thought they were entitled to pay at least $1,500. He stated that he himself had got the firm of Moses,

284 Blum & Weil to use their guides, as he was their superintendent; that he thought $50 or $100 ought to settle the case. I told him that we did not commence suits for $50 or $100, and that there was no use in his talking about the matter if that was his

idea. He then got up out of his chair and stated that his firm was not liable, as all the guides that they had used were made by a man who had a license and right to allow them to use them. I asked him who that man was, and he said it was Pipo and asked me if I knew him. I told him that I did, but I did not know that he had any license.

Q. 2. Did you serve a subpœna upon Albert Borchardt before he was examined in this case?

Obj. to as immaterial. Obj. overruled and exception.

A. I did at my office, No. 240 Broadway.

Q. 3. Did he at that time say anything to you about his having invented a button-sewing attachment that he would like Mr. Wooster to take hold of?

285 A. He did and asked me to speak to Mr. Wooster about it, which I did.

Def'ts' counsel moves to strike out the last three words of the answer. Motion granted.

Q. 4. Did you speak to Mr. Wooster about it?

Obj. to for the reasons stated in obj. to Q. 1, and that nothing that took place between Mr. Comstock and Mr. Wooster could affect these defendants. Obj. overruled and exception taken.

A. I did. I think the next day or the day after, and the following day introduced Mr. Borchardt to Mr. Wooster and again spoke to him in regard to the matter.

Def'ts' counsel moves to strike out all the answer after the words "I did" as not being responsive to the question. Motion granted and exception taken.

286 Q. 5. Did you speak to Mr. Wooster about it in the presence of Mr. Borchardt; and, if so, when and where?

A. I think the next day after I spoke to Mr. Wooster about it, the first time I introduced Mr. Borchardt to Mr. Wooster in this building.

Q. 7. Was that on the occasion of his appearing in this building in obedience to the subpœna, as related by him in his answer to 180th direct question of Borchardt's testimony?

Obj. to as leading. Overruled and exception.

A. It was.

Cross-examination:

X 8. What is your business?

A. I am by profession a lawyer.

X 9. Are you the attorney in this case for Mr. Wooster?

A. I am compl't's solicitor in this case.

287 X. 10. In how many cases of a similar nature are you solicitor for Mr. Wooster?

Obj. to as immaterial. Sustained and exception.

X 11. In how many cases of this nature have you been a witness for Mr. Wooster?

Same objection. Overruled and exception.

A. I recollect of only two before the master.

X 12. Question repeated.

Obj. continued. Same ruling.

A. Answer repeated.

X 13. In how many actions brought by Mr. Wooster for an alleged infringement of a guide have you been a witness?

Same objection and as having nothing whatever to do with witness' conversations with Borchardt, and as not proper cross-examination. Obj. sustained and exception.

288 X 14. How did you come to serve the subpœna on Mr. Borchardt in your office?

A. I had the subpœna and it was the first time I saw him.

X 15. What occasioned his visit to your office at that time?

A. I inquired for him and left my card.

X 16. When he came in response to that inquiry you served him with a subpœna?

A. I served him with a subpœna at the time he came there. I believe it was the second time he came. I was out the first time.

X 17. Did he appear here in response to that subpœna?

A. He came at the time directed in his subpœna.

X 18. When he came here at the time mentioned in the subpœna was he used as a witness by the compl't?

A. He was not. The case was adjourned.

X 19. Was he ever subpœnaed again by the complainant?

289 A. Not to my knowledge.

X 20. Don't you know as a matter of fact that he was not?

A. I don't think he was. I know I did not subpœna him myself.

Def'ts' counsel moves to strike out the answer as not responsive. Motion denied and exception taken.

X 21. When did this conversation with Borchardt, at 71 W. B'dway, take place?

A. I think it was within two or three days of the filing of the bill in this action and the issuing of the subpœna.

X 22. I want the year, the month, and the day of the month, as near as you can give it.

A. It was just after the subpœna was served on the def'ts in 1880; the month I do not recollect.

X 23. Do you mean to testify that any of the def'ts were

290 ever served with subpœnas in this case?

Obj. to, as the records are the best evidence, and as immaterial, and as not proper cross-examination. Objection overruled and exception taken.

A. I think they were, as Mr. Borchardt so represented to me when he called on me on that occasion, and they afterwards appeared and answered the bill in this case.

X 22. Who has the originals of the subpœnas served on the def'ts, as testified to by you?

A. At the present time I do not know.

X 23. Did you ever see them?

Obj. to as immaterial. Obj. sustained and exception taken.

X 24. Was this conversation with Borchardt, at 71 W. B'dway, before or after this action was commenced?

291 Obj. to as already answered. Obj. overruled and exception.

A. My recollection is a short time after.

X 25. Did you make any memorandum of that conversation in any book in your office?

A. No.

X 26. You are still the solicitor for Mr. Wooster in this case, are you not?

A. I am.

(S'g'd) ANDREW COMSTOCK.

Sworn before me—

(S'g'd) JOHN A. SHIELDS,
Master, &c.

The defendant moves to reopen this case on the affidavit annexed hereto, which is as follows, and is ready to proceed at once with the examination of his witness:

292 U. S. Circuit Court.

GEORGE H. WOOSTER *against* SOLOMON MOSES *et al.*

CITY & COUNTY OF NEW YORK, *ss:*

Franklin Bien, being duly sworn, says he is the counsel for defendant herein, & has charge of the defence herein; that deponent's father has been sick & confined to his bed from January 6, 1882, & is still so confined; that deponent left his office June 17, '82, and did not go to his office again till June 21, '82, owing to sickness of deponent's father and his own sickness; that during the time from Saturday to June 21, '82, deponent did not know this case was set down till he rec'd — Tuesday night at deponent's residence that this reference was set down for Wednesday, June 21, '82, at 11 a. m.; that deponent with a witness arrived at the master's office about 20 minutes past 11 a. m., & found Wooster, Pipo, & Mr. Browning present; that deponent stated he was ready to proceed, but said Wooster, Pipo, & Browning left.

FRANKLIN BIEN.

293 Sworn to before me June 22, 1882.

JOHN A. SHIELDS,
U. S. Com'r.

294 The master grants the motion of def'ts' counsel and states that he must close his evidence on the 23rd inst. at 3 p. m.

Mr. RICHARD SCHOEN, being called by def't and duly sworn, deposes as follows:

Q. 1. What is your name, age, residence, and occupation?
A. Richard Schoen; aged 25; I reside at 280 East 3rd St., N. Y., and am by occupation a bar-tender.
Q. 2. What was your business in 1880 and 1881?
A. Shirt folder.
Q. 3. Where?
A. With Moses, Blum & Weil.
Q. 4. How long have you been away from them?
A. As near as I can give *to* it, it is over a year.
Q. 5. Do you know John A. Pipo?
295 A. Yes, sir.
Q. 6. Did you see him here yesterday?
A. Yes, sir.
Q. 7. What is his business?
A. As far as I can give it he is a machinist.
Q. 8. Where does he live?
A. I don't know.
Q. 9. Has he any peculiar feature about him by which you could identify him?
A. By his face.
Q. 10. Well, what is it?
A. By his small-pox marks on his face and he has no nose.
Q. 11. Did he ever come to the place of Moses, Blum & Weil while you were there?
A. Yes, sir.
Q. 12. Do you recollect his coming there about a year and a half ago?
A. Yes, sir.
296 Q. 13. What took place between you and Pipo at that time?

Obj. to as incompetent and immaterial.

Def'ts' counsel moves a recess for ten minutes until the master returns.

After recess.

Objection sustained and exception taken.

Q. 14. Did John A. Pipo ever commit any criminal act in your presence? And, if so, state what it was and the circumstances under which it occurred.

Obj. to as improper, as leading, and as calling for the opinion of the witness as to what may be or may not be a criminal act. Obj. sustained and exception taken.

297 Q. 15. Do you know whether John A. Pipo ever stole any goods from the def'ts' place of business? And, if so, state the facts from which you derived your knowledge.

Obj. to as leading and as improper and, further, as evidence of a specific act and not upon the grounds of general reputation. Objection overruled and exception taken.

A. Yes, sir; Mr. Pipo came in the house when I was working for Moses, Blum & Weil, and went to the closet two or three times. The last time he was going downstairs, when I missed a pair of underdrawers and an undershirt. I then called Mr. Pipo into the room and told him that there was a pair of drawers and an undershirt missing. He asked me, "Do you think that I am a thief—that I stole them?" I told him that there was nobody else in the
298 room at the present, and that he must have stolen them. I said that if he would give up the drawers and shirt I would not let the firm know anything about this matter. Then he asked me if I would promise him to do so, and I said yes, and while so doing he took out the undershirt and drawers from under his vest belonging to Moses, Blum & Weil and laid them on the table. Then I told him that if he ever entered the house I would throw him out, and from that day to yesterday I never saw him since.

Q. 16. The shirt and drawers which he took from under his vest were the articles that you missed from the stock as he was going downstairs?

A. Yes, sir.

Compl't's counsel moves to strike out the last two questions and answers thereto, upon the ground that the matters called for are collateral to the issue; the matters called for should have
299 been asked on the cross-examination of Pipo. The master reserves his decision.

Cross-examination:

X 17. What position did you hold at this time in the employ of Moses, Blum & Weil?

A. Shirt-folder.

X 18. What were your duties as shirt-folder?

A. Getting up the stock for orders.

X 19. Did you have any men employed under you at this time?

A. No, sir; I was one of the workmen.

X 20. On what floor was this closet that you have spoken of situated?

A. The third.

X 21. How large a closet was it?

A. I should say about 12 or 13 feet—3½ long by 3½ deep.
300 X 22. How many shirts and drawers did this closet contain?

A. None. I meant to be understood as speaking of a water-closet.

X 23. Who did this shirt and drawers belong to?

A. Moses, Blum & Weil.

X 24. Do you mean to say that Pipo took the shirt and drawers from the water-closet?

A. No, sir.

X 25. Where did he take the shirt and drawers from?

A. From the stock.

X 26. How large *a large* a stock was there at that time?

A. I suppose there must be about 250 dozen of drawers and shirts, &c.

X 27. Do you know what Pipo came to this house for at the time you mentioned?

A. I do not.

301 X 28. What did he say to you when he came?

A. He complained about a pain in the stomach.

X 29. How soon did you miss this shirt and drawers?

A. In 15 or 20 minutes.

X 30. Where was Pipo when you first missed them?

A. In the water-closet.

X 31. Did not you testify on your direct examination that he was going downstairs when you missed them?

A. The water-closet is right at the stairway; as he went out of the water-closet he went down the stairway, and that is the reason I called him up at the time.

X 32. Was he in the water-closet or was he going downstairs when you missed the shirt and drawers?

A. He was in the water-closet.

302 X 33. Then it is not true, as testified in your direct examination, that he was going downstairs when you missed this shirt and drawers?

Obj. to as improper. Overruled and exception taken.

A. It is true; he had them at — time; he had them in the water-closet and going downstairs.

X 34. When did you first miss this shirt and drawers?

A. When Pipo was in the water-closet.

X 35. Then what do you mean by your A. to Q. 15, in which you say "the last time he was going downstairs when I missed a pair of under-drawers and undershirts?"

A. Mr. Pipo went into the water-closet and I called him back as he was going downstairs to the street from the water-closet; had he come back to my place I should not have called him.

X 36. Question repeated.

303 A. I meant to call him in and find out whether he had the undershirt or not.

X 37. Can you give any other or different answer to the previous questions than you have already given?

A. The undershirt and drawers were already missed and I went to claim them, as I thought that he was the man who took them; that is as good an answer as I can give.

X 38. In X Q. 29 I asked you, "How soon did you miss the shirt and drawers?" You answered, "In 15 or 20 minutes." From what time do you count the 15 or 20 minutes?

A. From the time that Pipo came in first.

X 39. How long did Pipo remain altogether?

A. Not longer than 20 minutes.

X 40. Did you count the number of shirts and drawers on that floor while Pipo was in the water-closet?

304 A. I have had an order to pick out half a dozen and I had 5½ of *of* each lot laid out; when I came back I found out that I had only 4½ of each laid out. There is where my suspicion came that Pipo took some.

X 41. Have you never mentioned this fact to the firm of Moses, Blum & Weil?

A. I did not.

X 42. Who have you mentioned it to?

A. The shipping clerk, Mr. Emile Schmidt, who is still in their employ; also to a man named Potter; I don't know his first name.

X 43. Why did you mention the fact to these two parties named?

A. In case anything would turn up I would have somebody in the house who would know something about it.

X 44. What did you expect to turn up?

Obj. to as immaterial and irrelevant. Obj. overruled and

305 exception taken.

A. In case that at any time these things should be missed I would not be to blame.

X 45. Will you describe the manner in which this shirt and drawers were made, and of what material they were made?

A. They were regular-made shirt and drawers of red flannel.

X 46. Were they bound or not bound?

A. The shirt had a sort of binding at the breast; a piece of satin run down it. I don't know exactly what you call it.

X 47. Were the drawers bound in any way?

A. No, sir.

X 48. How long were you in the employ of Moses, Blum & Weil?

A. About two years.

306 X 49. Do you know Wm. Bennett, who was in their employ?

Obj. to as irrelevant, immaterial, and not proper cross-examination. Obj. overruled and exception taken.

A. I do.

X 50. Can you tell me where he resides?

Obj. to as immaterial and improper. Obj. overruled and exception taken.

A. He is dead.

X 51. Was Joseph Schloss in the employ of Moses, Blum & Weil while you were there?

Obj. to as immaterial and improper. Obj. overruled and exception taken.

A. Yes, sir.

X 52. Where does he reside?

A. I do not know; uptown somewhere. He is now in their employ.

307 X 53. Was August Schmidt in the employ of Moses, Blum & Weil while you were there?

A. Yes, sir; and he still is in their employ.

X 54. Have you ever been arrested?

A. No, sir.

X 55. Did Moses, Blum & Weil, to your knowledge, ever use any folding-guides or binders folding on each edge or in the centre and on both edges previous to Oct. 5th, 1879?

Obj. to as immaterial, not proper cross-examination, and def'ts' counsel asks the master to hold that the compl't makes this witness his witness on this topic, and is bound by his evidence. Obj. overruled and exception taken.

A. I don't know.

RICHARD SCHOEN.

Sworn before me—

JOHN A. SHIELDS, *Master.*

Adjourned to Friday, June 23rd, 1882, at 10.30 a. m.

308 NEW YORK, *June 23rd,* 1882—10.30 p. m.

Met pursuant to adjournment.

Present: Counsel as before.

Def'ts rest without prejudice to their motion to strike out testimony.

Adjourned to June 27th, 1882, at 10 a. m., for argument on compl't's motion to strike out the testimony of the witness Schoen, and all motions to strike out testimony shall be heard and argued at that time.

NEW YORK, *July 7th,* 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for respective parties.

Adjourned to Wednesday, July 12th, 1882, at 11 a. m.

309 NEW YORK, *July* 12, 1882—11 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Mr. FRANCIS WITT, being called by compl't and duly sworn, deposes as follows:

Q. 1. Where is your place of business?

A. 60 Court St., Hoboken; I am a cabinet-maker.

Q. 2. Do you know Justus Bruns?

A. Yes, sir.

Q. 3. Where is his place of business?

A. In the same building—over my shop.

Q. 4. What is Mr. Bruns' business?

A. A carpenter.

Q. 5. Did you have a conversation with Mr. Bruns about
310 the middle of last April, and did you then state to Mr. Bruns that you would not believe John A. Pipo?

Obj. to as leading. Overruled and exception.

A. No, sir; I did not.

Q. 6. Do you know John A. Pipo, and, if so, how long have you known him?

A. Yes, sir; I have known him 20 years.

Q. 7. Where has Pipo resided—the major portion of the time—the last 20 years?

A. In Hoboken; I have lived there for 20 years.

Q. 8. Have you during that time heard people in the neighborhood of where Pipo resided speak of him?

Form of question obj. to as improper. Question withdrawn.

Q. 9. Do you know people who are acquainted with John A. Pipo?

311 Obj. to as immaterial and improper. Overruled and exception.

Q. 10. Did you ever hear them, or any of them, say anything derogatory as to his character?

Obj. to as improper. Obj. sustained.

Q. 11. Would you, from what you have heard from people residing in the neighborhood of John A. Pipo, and from his general reputation there for truth and veracity, believe him under oath?

Obj. to as improper, and that there is no foundation for the question, and that it is calling for the opinion of the witness; that it assumes that the witness has knowledge of the general reputation, etc., and that they assume to make the witness a judge of such conversations as it is assumed he has had with people. Obj. overruled and exception.

312 A. Yes, sir; I would believe him under oath. He sometimes talks a great deal when he is drunk, but I would believe what he would say when under oath.

Cross-examination:

X Q. 12. You were served with a subpœna by the def'ts and appeared here, did you not?

A. Yes, sir.

X 13. Did you have any conversation with me on that morning?

A. Yes, sir.

X 14. Did you not tell me that you did not know anything at all about John A. Pipo's general reputation for truth and veracity in the locality where he resided?

A. No, sir; no such thing.

X 15. Did you not tell me that you knew nothing at all about John A. Pipo one way or the other?

A. No, sir; I did not.

313 X 16. Have you a son who assists you in your business?

A. Yes, sir; I have a stepson in my business.

X 17. How long has he been engaged in your business?

Obj. to as immaterial and [im]proper cross-examination. Obj. sustained and exception taken.

X 18. With whom did you talk about this case last?

A. As far as I remember, with nobody, as I don't know anything about this case at all.

X 19. When did you see John A. Pipo last?

A. Last week?

X 20. Did you have any conversation with him in relation to your testimony in this case?

A. No, sir.

314 X 21. How many people have you heard talk about Pipo in reference to his general reputation for truth and veracity?

A. That I can't tell, sir, because I am not a man to go talking around all day, as I have got my business to attend to.

X 22. Have you ever heard anybody talk about Pipo's general reputation for truth and veracity?

A. No, sir; I can't say of any that I know of.

X 23. Do you recollect of any conversation with anybody about Pipo?

A. Yes; I do; but I don't know who it was. I have sometimes been speaking about him, but I can't tell what was said. I think I was talking about him with my neighbor, Mr. Smith, but I don't remember what was said; it is so long ago.

X 24. How long ago was this?

A. I guess it is baout 3 or 4 weeks. Mr. Pipo was present at that time with us.

315 X 25. Do you remember the names of any other persons with whom you talked about Pipo?

A. No, sir; I guess there has not been any more.

FRANCIS A. WITT.

Sworn before me—

JOHN A. SHIELDS, *Master.*

Def't's counsel moves to strike out all the testimony of the witness with the exception of that part which contradicts the witness Bruns.

Adjourned to Wednesday, July 19, 1882, at 10.30 a. m.

NEW YORK, *July 19th*, 1882—10.30 o'clock a. m.

Adjourned, by consent of counsel, to Monday, July 24th, 1882, at 10.30 a. m.

316 NEW YORK, *July* 24th, 1882—10.30 o'clock a. m.

Met pursuant to adjournment.

Present: Franklin Bien, Esq., of counsel for de'f't, and A. Comstock, Esqr., and Thos. B. Browning, Esq., of counsel for comp'l't.

FRANKLIN BIEN, Esqr., being duly sworn, testifies as a witness on the part of the def't-, as follows:

I am an attorney and counsellor at law and counsel for the def't-

herein. As counsel for def'ts I subpœnaed Francis Witt as a witness on their behalf. This is the same witness that was examined by the compl'ts. When he came here in response to my subpœna I asked him if he knew anything about John A. Pipo, in regard to his general reputation for truth and veracity, in the locality where he resides. He said he did not; that he knew nothing
317 about John A. Pipo one way or other; that he would have to so testify if I put him on as a witness, and I, believing such statement to be true, did not call him as a witness.

Cross-examined by THOS. B. BROWNING, Esq.:

X Q. 1. Did Francis Witt tell you that he did not know John A. Pipo, or simply that he did not know anything about his character for truth and veracity?

A. He said he did not know anything about John A. Pipo one way or the other and knew nothing about his general reputation for truth and veracity. There was nothing said about whether he knew him personally or not.

X 2. Did you not ask him whether he was acquainted with John A. Pipo?

A. Not that I remember.

X 3. Did you not assume that he was acquainted with John A. Pipo?

Obj. to as incompetent. Sustained.

318 X 4. Why did you subpœna Francis Witt?

Obj. to. Sustained. Exception.

FRANKLIN BIEN.

Sworn before me—

JOHN A. SHIELDS,
Master, &c.

Testimony closed.

Adjourned to Thursday, August 3, 1882, at 11 a. m.

319 Whereas certain letters patent of the United States, bearing date the 5th day of October, 1858, were granted to Alexander Douglas, of the city of New York, for an improved folding-guide for sewing-machines, &c.; and whereas George H. Wooster, of said city, has, by assignment from said Alexander Douglas, become sole owner of said letters patent; and whereas said letters patent have been extended for seven years from October 5th, 1872, and reissued December 10, 1872, No. 5180; and whereas —— ——, of ——, of the State of ——, party of the second part, is desirous of obtaining a license to use said folding-guide:

Now, this indenture witnesseth: That the said George H. Wooster, party of the first part, for and in consideration and in case of the due and faithful keeping and performing of each and all of the conditions, agreements, and admissions hereinafter contained to be kept and performed by the said party of the second part, has given and granted, and by these presents does give and grant, unto the

said party of the second part license to use — folding-guide-, containing the inventions described in said letters patent, for one year from the date hereof, at his place of business, No. — street, in the — of —, and no longer, and not otherwise or elsewhere, without written permission of said George H. Wooster, his executors, administrators or assigns—that is to say:

First. The said party of the second part, for his heirs, executors, and administrators, fully admitting and acknowledging the force and validity of said letters patent and all reissues thereof and the novelty of the invention therein described and claimed, covenants and agrees to pay to the said George H. Wooster, as a patent fee or royalty, the sum of — dollars in lawful money for the right and privilege to use said guide.

Second. The said party of the second part further covenants and agrees that during the term of said letters patent he will not make, use, cause to be used, sell, lend, give away, or keep on hand any folding guide or guides containing any of the inventions described and claimed in said letters patent without the written license of said party of the first part, or without paying the license fee for all he has had on hand during the extended term of said letters patent—that is to say, fifty dollars for each and every guide so kept in his premises or factory, the same to be recovered by ordinary action at law.

Third. The said party of the second part further covenants and agrees that he will not contest in law or equity nor aid or assist or advise others to contest in law or equity the validity of the above-described patent or any reissue thereof, and that he will never refuse to pay the party of the first part the regular license fee charged for the number of guides used or kept on hand by him.

Fourth. The said party of the second part further covenants and agrees to mark, stamp, or cast indelibly on each and every folding-guide used the words, Patented October 5th, 1858; extended September 24th, 1872; reissued December 10th, 1872; licensed to —— —— only, or some intelligible abbreviation thereof.

Fifth. The said party of the second part further covenants and agrees that the said party of the first part, or his assigns, or his or their duly constituted agents, shall have the right and privilege, and shall be permitted at any reasonable time or hour, to visit and inspect the establishment of the party of the second part where said folding-guides are and inspect and count the same, under penalty of one thousand dollars, which said sum is hereby fixed and stated as liquidated damages to be recovered against the said party of the second part in case of refusal to permit such visits and inspections as aforesaid.

Upon the failure of the party of the second part at any time faithfully to carry out and perform any or either of the said above-mentioned conditions and promises, this license shall be thereby *ipso facto* revoked and annulled, in which case this license and all rights and privileges of the party of the second part herein shall forever cease and determine; but the said party of the second part shall not be thereby relieved from any of the contracts or agreements on his part herein contained.

It is further distinctly understood and agreed between the parties as follows:

No folding-guide shall be, or is hereby, licensed unless it shall be marked or stamped as aforesaid, and while it shall be so stamped or marked.

It is further distinctly understood and agreed that this license is a personal privilege of the party of the second part only, and is not to be, and cannot be, assigned, transferred, divided, shared, apportioned, or used in connection with any person not named herein.

It is further distinctly understood and agreed that the party of the second part has no right or title of any kind in any folding-guide itself which is hereby licensed. Such guides are not lawfully made, nor is any property for sale of the same vested in the party of the second part, nor can they be transferred so as to vest any right to use the same in any party not named herein, but upon the expiration of this license, if the party of the second part wishes to discontinue the use of guides covered by the claims of the above-mentioned patent, he will deliver to the party of the first part, free of charge, all the folding-guides hereby licensed and all he then has or has had in his possession; and if the party of the second part fail to surrender all of said guides at or before the expiration of ten days from the termination of this license the license fee for all said guides for the next ensuing year, at the rate of — dollars for the guides hereby licensed, and fifty dollars for each additional guide that may be or may have been in the possession of said party of the second part, or during the term hereby granted or during the extended term of said letters patent shall immediately become due and payable, and the party of the second part hereby agrees to pay the same to the party of the first part without notice or demand.

In witness whereof the parties above named have hereunto set their hands and seals this — day of ——, 187–.

320 [Endorsed:] Waoster *vs.* Moses Compl't's Exh. Blank. Copy license. J. A. S., master. Mar. 14, 1882. License to use the Douglas folding-guide to M-. —— for — year — guides, dated ——.

321 Whereas certain letters patent of the United States bearing date the 5th day of October, 1858, were granted to Alexander Douglas, of the city of New York, for an improved folding-guide for sewing-machines, &c.; and whereas George H. Wooster, of said city, has, by assignment from said Alexander Douglas, become sole owner of said letters patent; and whereas said letters patent have been extended for seven years from October 5th, 1872, and re-issued December 10, 1872, No. 5180; and whereas John A. Pipo, of the city, county, and of the State of New York, party of the second part, is desirous of obtaining a license to use said folding-guide:

Now, this indenture witnesseth: That the said George H. Wooster, party of the first part, for and in consideration and in case of the due and faithful keeping and performing of each and all of the conditions, agreements, and admissions hereinafter contained, to

be kept and performed by the said party of the second part, has given and granted, and by these presents does give and grant, unto the said party of the second part license to use fifty folding-guides containing the inventions described in said letters patent, for four years & four months from the date hereof, at his place of business, No. 46 & 48 Leonard street, in the city of New York, or at any other one place, by giving written notice to the said George H. Wooster, his executors, administrators, or assigns—that is to say:

First. The said party of the second part, for his heirs, executors, and administrators, fully admitting and acknowledging the force and validity of said letters patent and all reissues thereof and the novelty of the invention therein described and claimed, covenants and agrees to pay to the said George H. Wooster, as a patent fee or royalty, the sum of forty hundred & fifty $\frac{00}{100}$ dollars in lawful money.

Second. The said party of the second part further covenants and agrees that during the term of said letters patent he will not make, use, caused to be used, sell, lend, give away, or keep on hand any folding guide or guides containing any of the inventions described and claimed in said letters patent without the written license of said party of the first part.

Third. The said party of the second part further covenants and agrees that he will not contest in law or equity nor aid or assist or advise others to contest in law or equity the validity of the above-described patent or any reissue thereof; and that he will never refuse to pay the party of the first part the regular license fee charged for the number of guides used or kept on hand by him, if said patent or any reissue thereof should be litigated or contested at law or in equity by other parties.

Fourth. The said party of the second part further covenants and agrees to mark, stamp, or cast indelibly on each and every folding-guide used the words patented October 5th, 1858; extended September 24th, 1872; reissued December, 10th, 1872; licensed to John A. Pipo only, or some intelligible abbreviation thereof.

Fifth. The said party of the second part further covenants and agrees that the said party of the first part, or his assigns, or his or their duly constituted agents, shall have the right and privilege, and shall be permitted at any reasonable time or hour to visit and inspect the establishment of the party of the second part where said folding-guides are and inspect and count the same.

Upon the failure of the party of the second part at any time faithfully to carry out and perform any or either of the said above-mentioned conditions and promises this license shall be thereby *ipso facto* revoked and annulled, in which case this license and all rights and privileges of the party of the second part herein shall forever cease and determine; but the said party of the second part shall not be thereby relieved from any of the contracts or agreements on his part herein contained.

It is further distinctly understood and agreed between the parties as follows:

No folding-guide shall be or is hereby licensed unless it shall be

marked or stamped as aforesaid, and while it shall be so stamped or marked.

It is further distinctly understood and agreed that this license is a personal privilege of the party of the second part only, and is not to be and cannot be assigned, transferred, divided, shared, apportioned, or used in connection with any person not named herein.

It is further distinctly understood and agreed that the party of the second part has no right or title of any kind in any folding-guide itself which is hereby licensed. Such guides are not lawfully made, nor is any property for use or sale of the same vested in the party of the second part, except as herein expressly licensed, nor can they be transferred so as to vest any right to use the same in any party not named herein; but it is agreed that upon the expiration of this license, if the party of the second part wishes to discontinue the use of guides covered by the claims of the above-mentioned patent, he will deliver to the party of the first part, free of charge, all the folding-guides hereby licensed, and all he then has or has had in his possession; and if the party of the second part fails to surrender all of said guides within ten days from the termination of this license the license fee for all shall become due and payable for the next ensuing year, and in that case the party of the second part agrees to pay said license fee on demand.

In witness whereof the party above named has hereunto set his hand and seal this 1st day of June, 1875.

GEO. H. WOOSTER. [SEAL.]
J. A. PIPO. [SEAL.]

322 [Endorsed:] License to use the Douglas folding-guide to Mr. John A. Pipo for seven years, dated June 1, 1875. U. S. circuit court. Filed Oct. 26, 1882. Joseph M. Deuel, clerk.

323 Circuit Court of the United States for the Southern District of New York.

GEORGE H. WOOSTER *vs.* SOLOMON MOSES *et al.*

To the honorable the judges of the circuit court of the United States for the southern district of New York:

I have attended to the duties assigned me in the decretal order made and entered herein August 29th, 1881, by which it was referred to me to take and state the account of the gains, profits, and advantages realized by the defendants by reason of the infringement of the letters patent upon which said suit was brought, and to assess the damages sustained by complainant thereby.

Upon said accounting before me the complainant was represented by Andrew Comstock, Esq., of counsel, and the defendants by Joseph Koch, Esq., and Franklin Bien, Esq., of counsel. Numerous sessions were had and the evidence offered has been taken and considered.

The defendants concede that they used machines that infringed complainant's patent, but deny having infringed to the extent insisted upon by complainant.

In obedience to an order to file and account showing such use, one of the defendants made affidavit that he is informed by
324 one A. Borchardt, who was formerly superintendent of defendants, that a certain number of folding-guides were used, and this is the only statement that he or they can furnish. At the same time an affidavit is filed purporting to have been made by said Borchardt, stating that a portion of the time from December, 1876, until the expiration of the patent, certain guides like complainant's design were used by the defendants. Neither of the defendants seem to have any knowledge or information on this subject, and neither of them or their superintendent seem to be able to recall the name of a single individual who was in their employ who used such guides in their manufacturing department.

It seems from the testimony of complainant's witness that the defendants caused to be made many more folding-guides than the affidavit of Borchardt discloses. John A. Pipo swears that he made four in 1876, three in 1877, one in 1878, and three in 1879. E. Broseman swears that in 1877 he made for them 7 binders and binding-guides, and two folding-guides in 1878. From testimony of these witnesses it appears that the defendants caused to be made folding-guides as follows:

1876	4
1877	10
1878	3
1879	3

An attempt was made to impeach the veracity of one of the witnesses, viz., John A. Pipo, but I do not consider that the evidence in this direction was such as to warrant my finding that the testimony of said witness was to be discredited.

325 The witness Borchardt in express terms denies the statements made by all these witnesses. It is true he was in a position to know just how many of these guides were used, but, in view of the fact that in all other particulars respecting the business his memory proved very defective, and, in view of the fact that the defendants profess to have no knowledge respecting their manufacturing department, I do not feel warranted in disbelieving the statement of complainant's witnesses.

I therefore find and report that the defendants caused to be procured guides in infringement of complainant's patent as follows:

In 1876	4
" 1877	10
" 1878	3
" 1879	3

There is no evidence before me upon which I can found a computation of profits, and I must therefore report that no profits have been proven.

Respecting the question of damages, it appears that the complainant has an established license fee of fifty dollars per year for each

guide which is made, used or caused to be used, sold, lent, given away, or kept on hand by any manufacturer.

Commutation rates were allowed when manufacturers used a greater number than three in every instance where a license was taken and the money paid in advance, the commutation rates being as follows:

3 guides per year	100
5 " " "	150
10 " " "	250

326 In order to obtain the benefit of such commutation rates, the complainant made it requisite for the parties using the patent to take out a license and pay the respective license fees in advance. The payment in advance of the license fee being a prerequisite to securing such commutation rates, I find as matter of law that these defendants, who, without any permission or authority from the complainant, procured and used the patent in question and contested in court his exclusive right to the same, are not entitled now to the benefit of such commutation rates.

This license fee of $50 per year must therefore be the measure of complainant's damages.

Applying the license fee, therefore, to the guides which defendants procured, I find and report the amount of complainant's damages to be the sum of $2,550.

This computation is based on the assumption that such guides were in defendants' possession and control during the time stated, and in condition to be used; there being no evidence to the contrary, such assumption is, I believe, warranted. In addition to the amount found as above, the complainant is entitled to interest from the times when such amounts were due, amounting up to the date of this report to five hundred and ninety-one dollars and forty-five cents, making in the aggregate the sum of thirty-one hundred and forty-one dollars and forty-five cents as the damages which complainant has sustained.

The evidence taken before me is filed herewith.

All of which is respectfully submitted.

New York, October 25th, 1882.

JOHN A. SHIELDS,
Master, &c.

327 (Endorsed:) U. S. circuit court, southern district of New York. George H. Wooster *vs.* Solomon Moses *et al.* Master's report. (U. S. circuit court. Filed Oct. 26th, 1882. Joseph M. Deuel.)

328 District Court of the United States for the Southern District of New York.

GEORGE H. WOOSTER *vs.* SOLOMON MOSES *et al.*

Exceptions taken by the defendants to the report made herein by by John A. Shields, Esq., one of the masters of this court to whom this cause was referred, by an order of this court made and entered on the 29th day of August, 1881, which report bears date the 25th day of October, 1882.

First exception.

For that the said master in his report stated that "E. Brosman swears that in 1877 he made for them seven binders and binding-guides and two folding-guides in 1878," whereas the said master should have stated in his report that the only evidence of the making of guides was that he swore that his books would show the number made and gave the number of guides from memoranda not made by him from said books; that he was not positive as to the number except on reference to said books; that he did not produce his books and his evidence therefore cannot be considered as to the number of guides made.

Second exception.

For that the said master in his report stated that "An at-
329 tempt was made to impeach the veracity of one of the witnesses, viz., John A. Pipo, but I do not consider that the evidence in this direction was such as to warrant my finding that the testimony of said witness was to be discredited," whereas the said master should have stated in his report that the attempt made to impeach the veracity of the witness, John A. Pipo, was successful, and his evidence therefore cannot be considered in any respect whatever.

3rd exception

For that the said master stated in his report, in respect to the testimony of Albert Borchardt, "I do not feel warranted in disbelieving the statements of complainant's witnesses," whereas the said master should have stated in his report, I feel warranted in believing the testimony of Albert Borchardt as against the evidence of complainant's witnesses.

4th exception.

For that the said master in his report stated "I therefore find and report that the defendants caused to be procured guides in infringement of complainant's patent as follows, in 1876, four; in 1877 ten; in 1878, three; and 1879, three," whereas the said master in his report should have stated, I therefore find and report that the only guide the defendants caused to be procured in infringement of complainant's patent were three, as follows, from 1877 to 1878, one; from 1878 to 1879, two; as admitted by them in their statement.

330 5th exception.

For that said master in his report stated that "The complainant's standard license fee for each folding-guide made, used, or caused to be used, sold, lent, given away, or kept on hand by a manufacturer was $50 for each guide, and this must, therefore, be the measure of damages applying to the guides used by defendants," whereas said master should have reported that the question of $50 license fee only applied to such parties who signed the license, and could not and did not apply to the defendants, in whose case the complainant must show actual damages not based on any license fee; and the complainant, not having proved any actual damages, is only entitled to nominal damages.

6th exception.

For that said master in his report stated complainant's damages should be "twenty-five hundred and fifty dollars," whereas the said master should have stated that complainant is entitled to damages in the nominal sum of six cents.

7th exception.

For that said master in his report stated "This compensation is based on the assumption that such guides were in defendants' possession and control during the time stated and in condition to be used; there being no evidence to the contrary, such assumption is, I believe, warranted," whereas said master should have stated this compensation of six cents is based on the fact that there were
331 only three guides used, as stated in the defendants' statement, and the complainant has failed to show any actual damages sustained by him.

8th exception.

For that said master in his report stated: "In addition to the amount found as above the complainant is entitled to interest from times when such amounts were due, amounting, up to the date of this report, to $501.41," whereas the said master in his report should not have said anything whatever about interest, as that is a matter within the discretion of the court, depending upon the peculiar circumstances of each case, and the decree of the court empowering the master to make a report did not authorize him to make any mention in his report of interest or in any way to decide as to the date when interest should commence.

All of which is respectfully submitted.

JOSEPH KOCH,
Solicitor for Defendants.

(Endorsed:) U. S. circuit court, southern district of New York. In equity. George H. Wooster *vs.* Solomon Moses *et al.* Defendants' exceptions to master's report. Joseph Koch, solicitor for defendants, 320 Broadway, N. Y. city. (U. S. circuit court. Filed Nov. 22, 1882. Joseph M. Deuel.)

332 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held in the United States court-rooms in the city of New York on the 16th day of April, 1883.

Present: William J. Wallace, circuit judge.

GEORGE H. WOOSTER

vs.

SOLOMON MOSES, GOTCHO BLUM & SOLOMON WEILL.

This action having finally come on to be heard in its regular order on the calendar, to be heard upon the exceptions to the master's report duly filed herein by the defendants, and the defendants having failed to present the exceptions for hearing as required by the rules of this court, and upon hearing Andrew Comstock for the complainant and Franklin Bien for the defendants, it is ordered, adjudged, and decreed that said exceptions, and each of them, be overruled, and that the said master's report, so far as the same ascertains the amount of complainant's damages by reason of the infringement of complainant's letters patent set forth in said bill, be in all things confirmed, without prejudice, however, to the right of the defendants to excuse their default and reopen the hearing, and that the complainant do recover of the defendants the sum

333 of thirty-one hundred and forty-one $\frac{45}{100}$ dollars, together with interest thereon from the date of said master's report, amounting to eighty-eight $\frac{98}{100}$, and also the costs and disbursements of this suit, to be taxed, amounting to —, amounting in all to the sum of — dollars, and that the complainant have execution and other proper process of this court for the collection thereof.

W. J. WALLACE.

(Endorsed:) U. S. circuit court. George H. Wooster ag'st Solomon Moses *et al.* Final decree. Andrew Comstock, compl't's sol'r, 237 Broadway. (U. S. circuit court. Filed April 16, 1883. Joseph M. Deuel, clerk.)

334 *Affidavit of Service.*

U. S. Circuit Court.

GEORGE H. WOOSTER, Complainant,

vs.

SOLOMON MOSES *et als.*, Defendants.

CITY AND COUNTY OF NEW YORK, *ss*:

Edward Gotchall, being duly sworn, says that he is of the age of 21 years, and that on the 17th day of April, 1883, at 237 Broadway, in the city of New York, in the southern district of New York, he served the annexed affidavit, together with the order to show cause, granted thereon, which is also hereunto annexed, on Andrew Comstock, Esq., complainant's attorney in this action, by delivering a copy of the same to a clerk in the office of said complainant's counsel, he being absent at the time from his office, and leaving the same with

such clerk. He further says that he knew the person served as aforesaid to be the clerk in the office of said Comstock and authorized to receive same.

EDWARD GOTCHALL.

Sworn to before me this 4th day of May, 1883.

[SEAL.] FRANKLIN BIEN,
Notary Public, N. Y. Co.

335 U. S. Circuit Court.

GEORGE H. WOOSTER *against* SOLOMON MOSES *et al.*

On the annexed affidavit, and all the pleadings, testimony, master's report, exceptions thereto, and all proceedings herein, let the complainant or his counsel show cause before a stated term of this court, at the equity term to be held on the 7th day of May, 1883, at 11 a. m., at the post-office building, in the city of New York, southern district of New York, why the defendants' default taken on April 16th, 1883, overruling their exceptions to the master's report should not be vacated on such terms as the court may direct and the defendants be allowed to have a hearing on said exceptions, and for such other and further relief as may be just, and in the mean time all proceedings on the part of the complainant and his counsel under the order overruling the defendants' exceptions by default be, and the same are hereby, stayed.

Dated at the city of New York this 16th day of April, 1883.

WM. J. WALLACE.

336 U. S. Circuit Court.

GEORGE H. WOOSTER *against* SOLOMON MOSES *et al.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Franklin Bien, being duly sworn, says he is a counselor-at-law and duly admitted as such in this court since about May, 1874; that Joseph Koch, of 320 Broadway, in the city of New York, is the defendant's atty herein; that said Koch, in November, 1881, was elected a State senator from the said city of New York, and since January 1, 1883, has been absent at Albany, N. Y., attending to his Legislature duties, and has been unable to attend to any of his professional engagements in this city, and all his causes have been by courtesy of counsel adjourned until after May 15th, 1883, when the Legislature will have adjourned and said Koch will again be able to attend to his business, including this action; that the complainant's patent expired on or about November, 1880, and he did not bring this action until January, 1881, although he claimed damages since 1876; that the following record is taken from the books of said Joseph Koch, and which deponent believes to be correct; that on February 5, 1881, the defendants appeared and paid fifty dollars; that in order to save time and expense said Koch, on or about May, 1881, consented to a decree and the matter was re-

ferred to John A. Shields, Esq., as master; that the mat-
337 ter proceeded before the master as to the question of damages; that deponent was retained as counsel simply to conduct the proceedings before the master, and deponent prior to that time nor since has had nothing to do with this case except to attend to the adjournments until said Koch shall be able to return; that the testimony before the master is very voluminous and consists of several thousand folios. A number of witnesses were examined at great length by both parties, and a large amount of time was wasted by complainant attempting to prove profits and going into the said question at great length, and then at last abandoning said question entirely; that in deponents' view it appears from the testimony and the master's report on its face that said master made a great mistake in his computation of the license fee at least of about fifteen hundred dollars, outside the question of complainant being entitled to any license fee, and from direct testimony which deponent thinks is uncontradicted, and so appears from the testimony of complainant, he is in law entitled to damages; in this case five hundred dollars is the outside limit the master could have found; that the defendant, who has charge of the law department of the defendants, is in Europe, and has been since 1882 very ill, at one time not expected to live, but is rapidly recovering and is expected to return June 1, 1883; that said Senator Joseph Koch is the regular attorney and counsel of the defendants, and none of the other defendants had the right to employ other counsel in this case; that deponent was retained by the said Koch as counsel, but only for the purposes aforesaid. Deponent further says that said master has reported the damages against these defendants between
338 three and four thousand dollars, which is simply preposterous; that the defendants are among the largest of shirt and drawer manufacturers in this country, of large means, and amply responsible for any damages that may be obtained by the complainant; that from an examination deponent believes this is the only suit now pending against the defendants; that there are no judgments or chattel mortgages against the defendants, individually or otherwise; that these statements are made for the purpose of obtaining a stay from the order overruling defendants' exceptions to the master's report by default on April 16, 1883; that the court overruled the same with leave to defendants to make a motion to open the default; that great injustice would be done defendants if the default were not opened, as they were entirely innocent in the matter, having left [it] in charge of said Koch and depended entirely on him to attend to same; that great injury would be done defendants if any judgment were allowed to be taken against the defendants; that deponent has been instructed by said Koch to make this motion; that many grave and important questions of law and fact are involved in this matter which ought to be reviewed by the court; that no harm can be done the complainant in opening this default, as if he has a meritorious report the same will be confirmed; that as he wasted so much time and waited so long he will not be injured by a little longer delay; that deponent was not conversant with the rule

that defendants had to do all the printing until lately; that it will take some time to print; that deponent requested Mr. Comstock, one of complainant's counsel, to consent to a case to be printed, as it was useless to bring before this
339 court testimony relating to profits, when by the master's report it appears that complainant abandoned that claim. The defendant's testimony shows positively that 2 guides were used for two years. There is no evidence to contradict this except that complainant shows that several were made, but does not show they were used. Then, again, one witness was allowed to testify. His knowledge was derived from books, which were not produced, and although deponent objected thereto, the same was allowed, and on deponent's motion to strike out the testimony for like reasons the same was denied under deponent's exceptions. This [is] only one of the numerous exceptions in the case, and deponent recites these facts simply — that defendants intend in good faith to be heard on the exceptions, and this is not done for the purpose of delay.

Wherefore deponent prays that he may have an order to show cause to open default overruling the defendants' exceptions by default, with a stay of proceedings under said default until the hearing and determination of this motion, and for such other relief as the court may deem just.

FRANKLIN BIEN.

Subscribed and sworn to before me this 16th day of April, 1883.
[SEAL.] A. BLUMENSTIEL,
Notary Public, N. Y. Co.

(Endorsed:) U. S. circuit court. George H. Wooster *vs.* Solomon Moses *et al.* Affidavit and order to show cause to open default, &c. Joseph Koch, def'ts' att'y, 320 B'way, N. Y. U. S. circuit court. Filed May 5, 1883. Timothy Griffith, clerk.

340 U. S. Circuit Court, Southern District of New York. In Equity.

GEORGE H. WOOSTER *ag'st* SOLOMON MOSES *et al.*

Please take notice that I will move, before the hon. judges of this court, at a stated term thereof held in the United States court-rooms in the city of New York, on the 22d day of December, 1882, at the opening of court on that day, or as soon thereafter as counsel can be heard, that the exceptions filed by the defendants herein to the master's report be heard and decided on that day or be placed on the calendar and a day assigned when they can be heard, and for such other and further order as may be just.

New York, Dec. 16, 1882.
Yours, &c. ANDREW COMSTOCK,
Compl't's Sol'r, 237 Broadway.

To Joseph Koch, Esq., def'ts' sol'r, 320 Broadway.

(Endorsed:) U. S. circuit court. George H. Wooster ag'st Solomon Moses *et al.* Notice of motion to have exceptions heard. Andrew Comstock, compl't's sol'r, 237 Broadway.

341 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *ag'st* SOLOMON MOSES *et al.*

CITY AND COUNTY OF NEW YORK, *ss:*

Andrew Comstock, being duly sworn, says he is the solicitor for the complainant herein.

That the defendant submitted to a decree and reference to John A. Shields, Esq., master.

That Franklin Bien acted as counsel all through the proceedings before the said master for the defendants and assumed the right and did offer and negotiate with deponent in an endeavor to settle the matter in controversy before and in the course of said accounting proceedings.

That the accounting before said master was first commenced on the 15th day of October, 1881, and continued from that time, with short adjournments, until the month of August, 1882—nearly one year—when the taking [of] testimony closed and the master made his report and gave notice to both complainant's and defendants' counsel he was ready to file the same. The defendants' counsel made no objections to said proposed report and filed none with the master, and the master duly filed his said report on the 26th day of October, 1882, holding the same nearly two months. The defendants' counsel, on the 26th day of Nov., 1882, filed exceptions thereto.

342 That on the 16th day of December, 1882, deponent served a notice on the defendants' counsel, a copy of which is hereto annexed, returnable Dec. 22, 1882, on which day the defendants were represented by a man in the office of said Bein. Deponent enquired of him whether they had printed the testimony and proceedings befor the master, and was informed they had not. I informed him they had better be about it, as the same was very long. He said he would tell Mr. Bein about it. When the case was called it was announced that the court would not hear argument upon exceptions to master's reports until the following month.

That deponent is informed and verily believes that no effort has ever yet been made nor any steps taken to cause the record to be printed on the part of the defendants or their counsel.

Deponent further says when these proceedings were first commenced before the master an order was made and served requiring the defendants to appear before said master and produce a sworn statement of the number of folding-guides used and time of use; also the number of yards of goods made by their use, and they were cross-examined in regard to such statement at considerable length, owing to their want or pretended lack of knowledge of their business, but this testimony is very material as it corroborates complainant's witnesses and contradicts defendants' witnesses.

Deponent further says that this matter is simply an accounting, and the master found the defendants had used a certain number of folding-guides in certain years and proof of an established license fee was taken as the measure of damage, no profit being proven,

and there can no grave and important questions of law arise,
343 as this deponent verily believes; the question of fact the master has found from the evidence adduced before him, which was simply the time and number of folding-guides used by defendants. As to the witness mentioned in the affidavit of said Bein, who was permitted to testify, said Bein made a motion to have his testimony stricken out, which complainant's counsel offered to consent to, and deponent is informed by the master that the testimony of this witness was not considered in arriving at his findings of fact, neither was it necessary, as complainant subpœnaed said witness' copartner, who was very much more familiar with the facts and gave the same testimony in effect.

Deponent further says that complainant has been at great expense in this matter, having been compelled to produce witnesses from other States, and has made advances for master's fees of three hundred dollars, and thinks that the defendants' counsel should have been prepared to argue his exceptions when the cause was regularly reached after having been set down upon two occasions, at defendants' request the last time.

Deponent further says that the defendants' counsel have sought in every way to prolong this controversy, continually asking for adjournments during the time of taking testimony, and now in not taking steps to prepare to support their case on exceptions by them filed.

Deponent further says that suit was brought against these defendants immediately, and within thirty days after complainant ascertained they had been using such infringing folding-guides.

344 Deponent further says that this cause came up and was called on the 27th day of March, 1883, to be heard upon the exceptions, and was adjourned at the defendants' request until the 16th day of April, 1883, thereby giving them ample time to have printed the record, but no attempt ever was made to do so; that the defendants' have had since November 26th, 1882, to print and prepare for the argument, and no step on their part has yet been taken, as it appears.

ANDREW COMSTOCK.

Sworn to before me this 7th day of May, 1883.

JOHN A. SHIELDS,
U. S. Com's'r, S. D. of N. Y.

(Endorsed:) U. S. circuit court. George H. Wooster *vs.* Solomon Moses *et al.* Affidavit, &c., to oppose motion to open default. Andrew Comstock, compl't's sol'r, 237 Broadway. U. S. circuit court. Filed May 11, 1883. Joseph M. Deuel.

345 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held in the United States court-rooms in the city of New York on the 11th day of May, 1883.

Present: Hon. William J. Wallace, circuit judge.

GEORGE H. WOOSTER *ag'st* SOLOMON MOSES *et al.* } In Equity.

A motion having been made upon the affidavit and order to show cause, dated April 16th, 1883, to open the default taken herein and decree entered on said 16th day of April, 1883, coming on to be heard, now, after reading and filing the affidavit of Franklin Bein, and order to show cause, and the affidavit of Andrew Comstock opposed, and after hearing said Franklin Bein for said motion and Frederick H. Betts in opposition, and after due consideration, it is ordered that if the defendants shall within ten days have executed and filed with the clerk of this court a good and sufficient bond or undertaking in the sum of five thousand dollars, to be approved by the clerk of this court, conditioned to pay any sum which may be recovered herein by the complainant, and also within ten days after a service of a copy of this order upon the defendants' solic-
346 itor pay to complainant's solicitor and counsel one hundred and fifty dollars counsel fee and the sum of three hundred dollars, paid by complainant, master's fees herein, and cause the proceedings and testimony taken before the master to be printed and served within thirty days from the date of this order, then said default so taken and decree entered be opened and the defendants permitted to come in and argue the exceptions filed herein; but on failure on the part of defendants to perform or carry out any of the provisions contained in this order, then and in that case the said motion be, and the same will be, denied.

WILLIAM J. WALLACE.

(Endorsed:) U. S. circuit court. George H. Wooster *vs.* Solomon Moses *et al.* Order opening default. Andrew Comstock, compl't's sol'r, 237 Broadway. U. S. circuit court. Filed May 12, 1883. Timothy Griffith, clerk.

347 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *ag'st* SOLOMON MOSES *et al.*

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York,* } *ss:*

Andrew Comstock, of mature age, being duly sworn, says: I am the complainant's solicitor in the above-entitled cause; that on the 12th day of May, 1883, at number 320 Broadway, New York city, *he* served a certified copy of the order conditionally opening the default and final decree entered herein, said order being entered on said 12th day of May, 1883, upon Joseph Koch, the defendants' solicitor, by leaving the same at his office at said No. with a responsible person in charge, he being absent at the time, as deponent was informed and verily believes; that the defendants or their solicitor have not performed any of the conditions required of them in said order, as deponent is informed, and have not paid or offered to pay

the sum of one hundred and fifty dollars nor the sum of three hundred dollars, according to the conditions of said order, to complainant or to deponent; that more than ten days have elapsed since the service of said order as aforesaid.

ANDREW COMSTOCK.

Sworn to before me this 25 day of May, 1883.

[SEAL.] HENRY I. THORNTON,
Notary Public, City & Co. of New York.

348 U. S. Circuit Court, Southern District of New York.

GEORGE H. WOOSTER *ag'st* SOLOMON MOSES *et al.*

Complainant waives costs and directs the clerk of this court to enter judgment without costs.

N. Y., May 25, 1883.

ANDREW COMSTOCK,
Compl't's Sol'r.

(Endorsed:) U. S. circuit court. George H. Wooster *ag'st* Solomon Moses *et al.* Affidavit of service of order & non-compliance and waiver of costs. Andrew Comstock, compl't's sol'r, 237 Broadway. (U. S. circuit court. Filed May 25, 1883. Timothy Griffith, clerk.)

349 Circuit Court of the United States for the Southern District of New York. In Equity.

GEORGE H. WOOSTER
vs.
SOLOMON MOSES, GOTCHO BLUM and SOLOMON WEILL.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States for the southern district of New York, do hereby certify that after an examination of the docket entries in the above-entitled suit and of the files of record in my office I fail to find any bond as required by an order of this court filed and entered on the 12th day of May, A. D. 1883.

In testimony whereof I have subscribed my name and have caused the seal of said court to be hereunto affixed this 25th day of May, A. D. 1883.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

350 And the costs having been waived by the complainant, waiver of same being annexed hereto, the process, pleadings, and decrees, together with other papers filed in said cause, are duly annexed hereunto.

Wherefore let the said George H. Wooster, complainant, recover of said Solomon Moses, Gotcho Blum, and Solomon Weill, defend-

ants, the sum of three thousand two hundred and thirty $\frac{43}{100}$ dollars, $3,230.43, as adjudged in said final decree.

Signed and enrolled this 25th day of May, A. D. 1883.

JOHN A. SHIELDS,
Deputy Clerk.

[Endorsed:] United States circuit court, southern district of New York. In equity. Wooster *vs.* Moses *et al.* Final record. Andrew Comstock, compl't's solicitor. Damages, $—; total, $3,230.43. U. S. circuit court. Filed May 23, 1883, 2.30 -c'k. Timothy Griffith, clerk.

351 *Affidavit of Service of Appeal.*

U. S. Circuit Court, Southern District of New York. Second Circuit.

GEORGE H. WOOSTER, Complainant
against
SOLOMON MOSES *et al.*, Defendants.

CITY AND COUNTY OF NEW YORK:

William Wetterer, being duly sworn, says that he is of the age of 20 years, and that on the 7th day of June, 1883, at 237 Broadway, in the city of New York, he served the annexed appeal on Andrew Comstock, complainant's attorney in this action, by delivering a copy of the same to a clerk in his office, and leaving the same with such clerk personally, at the same time exhibiting to him the annexed original. He further says that he knew the person served as aforesaid to be the clerk mentioned and described in this affidavit as the clerk of Andrew Comstock, complainant's attorney.

WM. WETTERER.

Sworn to before me this 9th day of June, 1883.

[SEAL.] FRANKLIN DEIN,
Notary Public, N. Y. Co.

352 United States Circuit Court, Southern District of New York, Second Circuit. In Equity.

GEORGE H. WOOSTER, Complainant & Appellee,
vs.
SOLOMON MOSES, GOTCHO BLUM, and SOLOMON WEILL, Defendants & Appellants.

To the honorable the Supreme Court of the United States:

The appeal of Solomon Moses, Gotcho Blum, and Solomon Weill, defendants and appellants above named, respectfully showeth that upon the 20th day of December, 1880, the above-named complainant filed his bill of complaint in the circuit court of the United States for the southern district of New York, in the second circuit, against the above-named defendants, Solomon Moses, Gotcho Blum, and

Solomon Weill, in a suit in equity, alleging that said defendants had infringed the rights of the complainant therein as secured to him by letters patent granted 5th day of October, 1858, to Alexander Douglas, assignor to George H. Wooster, complainant and appellee, and numbered 21659, and praying for an accounting and payment to the complainant by the said defendants of the profits, &c., by them realized and of the damages suffered by said George H.
353 Wooster, complainant and appellee, by reason of said infringement of said letters patent, and also that the writs of subpœna and of injunction might be issued against said defendants, their clerks, agents, servants, and workmen, &c.

These defendants and appellants further showeth that pursuant to said prayer a subpœna *ad respondendum* issued out of and under the seal of the said circuit court and was duly served on said defendant, Gotcho Blum, and that the said defendants, Solomon Moses, Gotcho Blum, & Solomon Weill, appeared and answered said bill of complaint, and among other things denied that they infringed the letters patent; that a general replication was filed by the complainant to said answer; that thereafter the defendants consented to an interlocutory decree affirming the validity of said letters patent and referring the matter to John A. Shields, Esq., as *pro hac vice* a master of said court, to take and state the account, &c.; that thereafter such proceedings were had in said cause that on the 25th day of May, 1883, a final decision was entered in said circuit court, whereby George H. Wooster, complainant, recovered of Solomon Moses, Gotcho Blum, and Solomon Weill, defendants, the sum of thirty-two hundred and thirty $\frac{43}{100}$ dollars, which said decree is, as these appellants are advised, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the decree of said circuit court, together with the bill of complaint, answer, replication, pleadings, depositions, evidence, and exhibits and proceedings in said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew
354 and that the said decree of the said circuit court and every part thereof may be reversed with costs or such other decree made as *to* the Supreme Court of the United States shall deem just.

June 5th, 1883.

MOSES, BLUM, & WEILL,
Defendants, Appellants,
By JOSEPH KOCH,
Att'y for Defendants & Appel's, 320 Broadway, N. Y.

Appeal allowed.
June 5th, 1883.

ADDISON BROWN.

(Endorsed:) U. S. circuit court, So. district of New York. George H. Wooster *vs.* Solomon Moses *et al.* Appeal. Joseph Koch, att'y for def'ts & app'l'ts, 320 Broadway, N. Y. city. Due service of a

copy of within appeal hereby admitted. N. Y., June 7th, 1883. U. S. circuit court. Filed June 9th, 1883. Timothy Griffith, clerk.

355 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Solomon H. WOOSTER
vs.
SOLOMON MOSES, GOTCHO BLUM, and SOLOMON WEILL.

Know all men by these presents that we, Solomon Moses Gotcho Blum, and Solomon Weill, composing the firm of Moses, Blum and Weill; Hyman Blum, of 74 Leonard street, in the city, county, and State of New York, and Samuel S. Laderer, of 342 Greenwich street, in the city, county, and State of New York, are held and firmly bound unto the above-named George H. Wooster in the sum of sixty-five hundred dollars, to be paid to the said George H. Wooster; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 13th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas the above-named Solomon Moses, Gotcho Blum, & Solomon Weill have prosecuted an appeal to the Supreme Court of the Unitd States to reverse the final decree rendered in the above-entitled suit by the judge of the circuit court of the United
356 States for the southern district of New York:

Now therefore the condition of this obligation is such that if the above-named Solomon Moses, Gotcho Blum, and Solomon Weill shall prosecute said appeal to effect and answer all damages and costs if said Moses, Blum and Weill fail to make said final decree good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

MOSES, BLUM & WEILL, [SEAL.]
By SOLOMON MOSES. [SEAL.]
HYMAN BLUM. [SEAL.]
SAM. L. LADERER. [SEAL.]

Sealed and delivered and taken and acknowledged this 30th day of June, 1883, before me—

[SEAL.] FRANKLIN BEIN,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Hyman Blum and Samuel L. Laderer, being duly sworn, doth depose and say, each for himself, that he is worth the sum of fifteen thousand dollars over and above all his just debts and liabilities.

HYMAN BLUM.
SAM. L. LADERER.

Sworn to this 30th day of June, A. D. 1883, before me—
[SEAL.] FRANKLIN BEIN,
Notary Public, N. Y. Co.

357 (Endorsed:) U. S. circuit court. George H. Wooster *vs.* Solonton Moses *et al.* Bond for damages and costs on —. Joseph Koch, defendants' att'y, 320 Broadway, N. Y. U. S. circuit court. Filed July 3d, 1883—1.15 p. m. Timothy Griffith, clerk.

358 *Affidavit of Service of Citation.*

U. S. Circuit Court, Southern District of New York, 2d Circuit.

GEORGE H. WOOSTER, Complainant,
against
SOLOMON MOSES *et al.*, Defendants.

CITY AND COUNTY OF NEW YORK, *ss*:

William Wetterer, being duly sworn, says that he is of the age of 20 years, and that on the 7th day of June, 1883, at 237 Broadway, in the city of New York, he served the annexed citation on Andrew Comstock, complainant's attorney in this action, by delivering a copy of the same to a clerk in the office of said Comstock personally, and leaving the same with such clerk, at the same time exhibiting to such clerk the annexed original. He further says that he knew the person served as aforesaid to be the person mentioned and described in this affidavit as the clerk in the office of said Comstock, complainant's att'y.

WM. WETTERER.

Sworn to before me this 9th day of June, 1883.
[SEAL.] FRANKLIN BEIN,
Notary Public, N. Y. Co.

359 United States Circuit Court, Southern District of New York, Second Circuit. In Equity.

GEORGE H. WOOSTER, Complainant & Appellee,
against
SOLOMON MOSES, GOTCHO BLUM, and SOLOMON WEILL, Defendants & Appellants.

By the Honorable Addison Brown, judge of the circuit court of the United States in and for the second circuit and southern district of New York.

To George H. Wooster:

Whereas Solomon Moses, Gotcho Blum, & Solomon Weill have lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the

southern district of New York made in favor of you, the said George H. Wooster, and have filed security, as required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do in the matter of said appeal what may remain to justice to be done in the premises.

Given under my hand, at the city of New York, in the
360 southern district of New York, the 5th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

ADDISON BROWN.

(Endorsed:) United States circuit court, southern district of New York. George H. Wooster against Solomon Moses *et al.* Citation. Joseph Koch, att'y for def'ts & app'l'ts, 320 B'way, N. Y. Due service of a copy of within citation hereby admitted. N. Y., June 7th, 1883. U. S. circuit court. Filed June 9th, 1883. Timothy Griffith, clerk.

361 Circuit Court of the United States for the Southern District of New York. In Equity.

GEORGE H. WOOSTER

vs.

SOLOMON MOSES, GOTCHO BLUM, and SOLOMON WEILL.

It is hereby stipulated that Exhibits Folder, Exhibit No. 3 and Exhibit No. 4, same being certain guides offered in evidence before John A. Shields, master, etc., on the accounting in the above-entitled cause, be retained by the clerk of this court and forwarded to the clerk of the Supreme Court of the United States on the hearing of the appeal taken herein.

New York, October 10th, 1883.

(S'g'd) JOS. KOCH, *Def'ts' Att'y.*
(S'g'd) ANDREW COMSTOCK,
Compl't's Sol'r.

[Endorsed:] U. S. circuit court. Filed Oct. 11, 1883. Timothy Griffith, clerk.

362 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from Nos. one to three hundred and sixty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of George H. Wooster against Solomon Moses, Gotcho Blum, and Solomon Weill as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to

be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the said United States the one hundred and eighth.

[Seal of U. S. Circuit Court.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 151. Solomon Moses and Solomon Weill, survivors of Gotcho Blum, appellants, *vs.* George H. Wooster. Filed 12th October, 1883.

SUPREME COURT OF THE UNITED STATES.

No. 408.—October Term. 1885.

SOLOMON MOSES, *et al.*, *Appellants*,
vs.
GEORGE H. WOOSTER.

Notice of Motion and Affidavit.

[ENDORSED.—Oct. 19. Supreme Court U. S., 1885, Oct'r Term. No. 408. Solomon Moses *et al.*, appt's, *vs.* George H. Wooster. Notice of motion that case abate as to Gotcho Blum, and affidavit of Solomon Moses. Office Supreme Court U. S.—Filed Oct. 12, 1885. James H. McKenney, Clerk.

Service of a copy of the within hereby admitted, without prejudice to any subsequent objection by appellees. Dated N. Y., Oct. 10, 1885. Frederick H. Betts, solicitor for respondent in the U. S. Supreme Court.]

SUPREME COURT OF THE UNITED STATES.

SOLOMON MOSES, *et al.*, *Appellants*,
against
GEORGE H. WOOSTER, *Respondent*. } No. 408.

SIR:

Please to take notice that on the annexed affidavit of Solomon Moses, defendant and appellant, and reference being had to the affidavit, notice of motion, and order heretofore

made and on file in the office of the Clerk of this Court, suggesting the death of the defendant Gotscho Blum on the record, we shall move this Honorable Court, on the 19th day of October, 1885, at the opening thereof, or as soon thereafter as counsel can be heard at the Capitol in the city of Washington, D. C., for an order pursuant to Section 956 of the Revised Statutes of the United States, that this action abate as against the said Gotscho Blum, deceased, and shall proceed at the suit of Solomon Moses and Solomon Weil, the surviving defendants and appellants.

Yours respectfully,

HORATIO P. ALLEN,
Solicitor for Appellants.

To

FREDERICK H. BETTS, Esq.,
Solicitor for Respondent.

SUPREME COURT OF THE UNITED STATES.

SOLOMON MOSES, *et al.*, *Appellants*,
agst
GEORGE H. WOOSTER, *Respondent.*
No. 408.

SOUTHERN DISTRICT OF NEW YORK,
STATE OF NEW YORK,
City and County of New York.
ss.

Solomon Moses, having been duly sworn, says:

I am one of the defendants and appellants herein. This action was brought against the defendants as copartners under their firm name of Moses Blum & Weil. That on the 12th day of October, 1883, the appellants appealed from the decision of the Circuit Court of the United States held in

and for the Southern District of New York to the Supreme Court of the United States, and that the appeal is now pending in the said Supreme Court of the United States. That on the 2d day of January, 1884, one of the appellants, Gotscho Blum, died, and that the defendants, your deponent, the said Solomon Moses, and the defendant and appellant, Solomon Weil, are the surviving members of said firm and the surving defendants and appellants. That on the 11th day of April, 1885, a motion was made in the said Supreme Court of the United States that the death of the said Gotscho Blum be suggested upon the record, and that the representatives of the said Gotscho Blum, deceased, shall become parties to this appeal, &c., and an order to that effect was duly entered in the said Supreme Court of the United States, which said papers are on file in the office of the Clerk of the said Supreme Court of the United States, and to which your deponent respectfully refers without setting forth the same at length.

Wherefore your deponent prays, in pursuance of Section 956 of the Revised Statutes of the United States, that the death of the said Gotscho Blum having been suggested upon the record, the action abate as against him and proceed at the suit of the surviving defendants.

SOLOMON MOSES.

Sworn and subscribed to before me this 9th day of October, 1885.

FRANKLIN BIEN,
Notary Public,
N. Y. Co.

[SEAL.]

122-640

Office Supreme Court U. S.
FILED
OCT 19 1885
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

SOLOMON MOSES ET AL.,
Appellants,
AGAINST
GEORGE H. WOOSTER,
Respondent.

Respondent's Brief on motion for order of abatement as to deceased defendant and appellant, Gotscho Blum.

STATEMENT OF FACTS.

This is a suit against three defendants, copartners, for infringement of letters patent. The complainant obtained a final decree for an injunction and damages, and on the 23d day of May, 1883, a final judgment for the sum of $3,230.43 was entered in the Circuit Court of the United States for the Southern District of New York against said defendants.

An appeal to this Court from said final decree and judgment was duly taken by the defendants on the 12th day of October, 1883, and the cause was duly docketed.

On the 2d day of January, 1884, the defendant and appellant Gotscho Blum died, and on the 11th day of April, 1885, a motion was made in this Court by the plaintiff and respondent that the death of said Gotscho Blum be suggested upon the record and for an order that unless the representatives of said Gotscho Blum, deceased, should become parties within the first ten days of the ensuing Term, the appeal of said Gotscho Blum be dismissed.

The defendants and appellants now move for an order that this suit be abated as against the said Gotscho Blum, deceased, and proceed at the suit of the survivors, under section 956 of the Revised Statutes.

FIRST POINT.

Section 956, R. S., does not apply to the present case.

The section (956, R. S.) under which appellants move does not apply to the present case at all.

Section 956 is to be read in connection with section 955. The latter relates only to the death of a party *before* final judgment. Section 956, properly construed, relates also to the death of a party *before* final judgment.

The two sections read as follows:

"SEC. 955. When either of the parties, whether "plaintiff or petitioner or defendant, in any suit in "any court of the United States dies before final judg- "ment, the executor or administrator of such deceased "party may, in case the cause of action survives by "law, prosecute or defend any such suit to final judg- "ment. The defendant shall answer accordingly, and

"the Court shall hear and determine the cause and "render judgment for or against the executor or ad- "ministrator, as the case may require. And if such "executor or administrator, having been duly served "with a *scire facias* from the office of the clerk of the "court where the suit is depending, twenty days be- "forehand, neglects or refuses to become party to the "suit, the Court may render judgment against the "estate of the deceased party, in the same manner as "if the executor or administrator had voluntarily "made himself a party. The executor or administra- "tor who becomes a party as aforesaid shall, upon "motion to the Court, be entitled to a continuance of "the suit until the next term of said Court.

"SEC. 956. If there are two or more plaintiffs or "defendants, in a suit where the cause of action sur- "vives to the surviving plaintiff, or against the sur- "viving defendant, and one or more or them dies, the "suit or action shall not be thereby abated; but, such "death being suggested upon the record, the action "shall proceed at the suit of the surviving plaintiff "against the surviving defendant."

Neither section has anything to do with *appeals from* a final judgment.

Green vs. Watkins, 6 Wheat., 160.

But even if section 956 did apply to appealed cases after final judgment, this Court is now asked to grant an order declaring the *very thing* (*i. e.*, that the suit shall abate) which the section itself declares shall *not* happen.

SECOND POINT.

A suit cannot abate after a final judgment in favor of a plaintiff, except through

the fault of the plaintiff himself, or his representatives.

The practice in regard to a suit after judgment or decree, and pending an appeal or writ of error, is determined by Rule 15, Supreme Ct. Rules.

The first subdivision of that rule, and the one under which the order of April 11, 1885, was made in the present suit by this Court, was first promulgated after the case of

Green vs. Watkins, 6 Wheat., 260,

and in consequence of that case.

Mr. Justice STORY, in delivering the opinion of the Court, said:

"There is a material distinction between the death "of parties before judgment and after judgment, and "while a writ of error is depending. In the former, "all personal actions by the common law abate; and "it required the aid of some statute, like that of the "thirty-first section of the Judiciary Act of 1789, Ch. "20" (§§ 955, 956 R. S.), "to enable the action to be "prosecuted by or against the personal representative "of the deceased, when the cause of action survived. " * * * But, in cases of writs of error upon judg- "ments already rendered, a different rule prevails. In "personal actions, if the plaintiff in error dies before "assignment of error, it is said that by the course of "proceedings at common law, the writ abates; but if "after assignment of errors it is otherwise."

From this language it is evident that the death of a party before judgment abates the *suit;* after judgment and pending appeal, it, at most, abates the *writ of error or appeal.*

The only case where the cause can abate in consequence of the death of a party after final judgment, and pending an appeal, is provided for in the second subdivision of Rule 15 (Sup. Ct. Rules), and it is where neither of the parties takes any further action upon the appeal after the death of the party has been suggested upon the record.

There the party in whose favor the judgment had been obtained would be in fault, which is not the present case.

THIRD POINT.

Subdivision 1 of Rule 15 was drawn in aid of a deceased party, not to deprive a successful plaintiff of his property.

The language of the rule shows plainly that it was intended to provide for a case where a party was in danger of losing his rights on an appeal, and to permit his representatives to conduct the appeal in his stead. Of course they may waive the privilege by not appearing, after a suggestion of the death on the record, and in that case, if appellants, the *appeal* will be dismissed, as in the present case.

The rule is in aid of the deceased party.

But the death of a party to a suit after a judgment obtained against him cannot release his estate, whether he takes an appeal from the judgment or not.

The rule gives his representatives the option of pursuing the appeal, but the successful party cannot lose his claim because the judgment debtor has died, and his representatives do not care to appeal.

FOURTH POINT.

Infringement of Letters Patent is a tort, and each defendant is jointly and severally liable.

The fact that there are co-defendants and appellants, who are also liable for the amount of the judgment, does not affect a case where the defendants are joint tort-feasors. Judgment against all is a judgment against each, and the estate of each is bound for the whole amount.

The motion should be denied.

Respectfully submitted,

FREDERIC H. BETTS,
J. E. HINDON HYDE,
Counsel.